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 ORDER 202X

DEADLINE 8

SUMMARY SUBMISSION ON BEHALF OF

NATIONAL HIGHWAYS LIMITED

Interested Party Reference: FC3E3E146

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1. Introduction

1.1 This is the Deadline 8 submission of National Highways Limited (**"NH"**) provided in respect of the application by RWE Renewables UK Solar and Storage Limited (the **"Applicant"**) for a Development Consent Order (**"DCO"**) for the Tween Bridge Solar Farm (the **"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 includes the following:

1.3.1 NH's response to the Applicant's Response to Deadline 5 Submissions [REP6-048] – see section 2;

1.3.2 NH's response to the Justification for the Applicant's Preferred Protective Provisions (as updated at Deadline 6) [REP6-045] – see section 3; and

1.3.3 NH's response to the Applicant's Response to Deadline 7 Submissions [REP7-003] – see section 4; and

1.3.4 A summary of NH's final position at the close of examination in respect of matters which remain to be resolved between NH and the Applicant – see section 5.

1.4 In view of the brevity of this document, a summary has not been provided.

2. NH Response to the Applicant's Response to Deadline 5 Submissions [REP6-048]

2.1 The table below sets out NH's response to the relevant parts of Table 9 of document [REP6-048]:

Reference	Applicant comment	NH response
2.1	The Applicant's response to NH's request for a veto provision under paragraph 7(2) of its preferred protective provisions is set out in detail in section 3 of Justification for the Applicant's Preferred Protective Provisions [Document Reference 8.23 Revision 3]. NH claims "the provisions of paragraph 7(2) … are required in order to ensure that NH is aware of the progress of the specified	NH notes the Applicant's extensive submissions in opposition to the so-called "veto" provisions within paragraph 7(2) of the NH PPs. NH's position has not changed on this matter. As NH has set out previously, particularly in its Deadline 5 Submission [REP5-063], the characterisation of this provision as a

	works affecting the SRN and NH's undertaking, the scope of those operations, the potential impact to road users…" The ExA should be in no doubt that each of these claimed objectives is fulfilled by other clauses of the protective provisions, none of which involve a veto on the Applicant's ability to exercise Order powers. Specifically: • Provision ensuring that NH is aware of the progress of the specified works affecting the SRN and NH's undertaking is addressed by paragraph 92 (construction of the specified works) of Schedule 14, Part 7 of the draft DCO [Document Reference 3.1 Revision 9]. • Provision ensuring that NH is aware of the scope of those operations is addressed by paragraph 91 (prior approvals and security) of Schedule 14, Part 7 of the draft DCO. • Provision ensuring that NH is aware of the potential impact to road users is also addressed by paragraph 91 (prior approvals and security) of Schedule 14, Part 7 of the draft DCO. It should be noted in this context that the only direct interface with the strategic road network concerns a cable crossing of the M180, which would be installed by horizontal directional drilling. Accordingly, no impact to road users is anticipated as a result of the construction of the Scheme. In relation to land negotiations, the Applicant continues to engage with NH with a view to reaching agreement on Heads of Terms. The Applicant is committed to continuing these discussions but there is no guarantee that an agreement will be reached and this fact underscores the importance of ensuring that the Applicant's ability to exercise compulsory acquisition powers over land in which NH has an interest is not subject to additional restrictions which conflict with guidance. The	"veto" is overstated and misrepresents the purpose of the provision and NH's intent as a public authority/strategic highways company. The argument which the Applicant presents against veto provisions is fundamentally flawed on the basis that none of the provisions which it says provide comfort to NH operate in the way that they have been presented by the Applicant in submissions. For example, Paragraph 78 (Construction of the specified works) of Part 7 of Schedule 14 affords NH only 28 days' notice of commencement of the specified works (versus the three months provided in NH's standard PPs). The notice provisions do not extend to the use of any other power which may impact on the network (e.g. tree felling or the discharge of water into drainage assets which could give rise to highways impacts). This, combined with the fact that under the Applicant's proposals, NH would be unable to impose reasonable conditions, mean that they are wholly insufficient as a form of protection for NH. Notwithstanding this, the core part of NH's argument made in NH's Written Representation [REP1-067], Deadline 4 Submission [REP4-078], Deadline 5 Submission [REP5-063] and Deadline 6 Submission [REP6-081] remains unanswered. This is the Applicant's repeated claim that the only direct interface with the SRN concerns a cable crossing of the M180 to be installed by Horizontal Directional Drilling (**"HDD"**). This claim is completely at odds with the powers that the Applicant is seeking comprised in Work No. 2 and Work. No. 8 set out in Schedule 1 of the dDCO. As NH has made clear in every submission, these powers go far beyond cable works and no legal control exists in the DCO to limit the exercise of those powers to just cabling. By the Applicant's own admission, it does not intend on exercising those powers over the SRN – which begs the question as to why their inclusion in the Order over NH land specifically is considered reasonable and necessary in the first place. In the absence of a control over those powers on the SRN, NH requires these very limited "veto" provisions to be included in its

	Applicant understands that NH has recently appointed agents to act on its behalf as regards the negotiation of the acquisition of these rights by agreement and the Applicant looks forward to engaging substantively with NH's agent in that regard. It is also worth noting that the terms of the veto provision sought by NH extend beyond the exercise of compulsory acquisition powers over land in which NH has an interest. NH is seeking a provision the effect of which would be to require its consent to be obtained prior to the exercise of substantially all of the provisions of the DCO insofar as they apply to land in which NH has an interest. No justification has been provided for such a blanket provision, which is significantly greater in reach than that sought by a number of other statutory undertakers (and opposed by the Applicant), nor has NH explained why its interest in the SRN would not be afforded sufficient protection in the absence of such a provision, having regard to the extensive protections that are already in place under the remainder of the protective provisions for NH's benefit.	protective provisions in paragraph 7(2) to ensure that the works carried out on the SRN are appropriately controlled alongside other uses of the SRN. Provisions of the type provided in paragraph 7(2) are now well-precedented, as the Applicant has itself acknowledged elsewhere in its submissions, including having been accepted on a number of recent solar schemes. In those schemes (for example Great North Road (decision stage), Fosse Green (decision stage) and Green Hill (decision stage)), applicants have not disputed the need for the protection which these provisions afford NH. By way of direct comparison, on all of those schemes, the Applicant was also seeking wider powers over the SRN than it actually intended to implement. Hence, why NH considers that in such circumstances – and where the Order powers are drawn wider than is actually required – a "veto" power as proposed in paragraph 7(2) is an appropriate control. In respect of voluntary agreement of land rights, NH confirms that its agent has been instructed to engage with the Applicant in relation to the Heads of Terms and that engagement is ongoing. The suggestion that para 7(2) would require NH's consent "to be obtained prior to the exercise of substantially all of the provisions of the DCO" is incorrect and misleading. By way of rough approximation, the draft DCO [REP6-002] contains 50 articles, whereas the list of powers in paragraph 7(2) of the PPs contains only 16 entries. Suggesting that the provision is "blanket" is misleading. NH's justification for the provisions of paragraph 7(2) has been set out on numerous occasions, most notably in its Relevant Representation [RR-022], its Written Representation [REP1-067], its Deadline 5 Submission [REP5-063] and its Deadline 6 Submission [REP6-081]. What the ExA has yet to see from the Applicant is any form of justification over the need for the powers contained in Work No. 2 and Work No. 8 over the SRN. In the absence of that justification,

		NH requests that paragraph 7(2) as proposed in its preferred protective provisions are reinstated in any made Order.
2.6	There is no substance in this point. The 2026 guidance provides as follows at paragraph 4.25: "Furthermore, [protective provisions] should not simply negate the principal provisions of the DCO and thereby become an impediment to implementation of the project". Therefore, it is clear that the 2026 guidance does in fact take exception to the imposition through protective provisions of clauses which negate the principal provisions of the DCO. Although para 12 of the 2024 guidance specifically included the words "particularly concerning proposed compulsory acquisition of statutory undertakers' land" in contextualising the reference to provisions which negate the principal provisions of the DCO, the provisions targeted by para 4.25 of the 2026 guidance are capable of including those which relate to the compulsory acquisition of statutory undertakers' land and this is clear on any reasonable understanding of para 4.26 of the 2016 guidance.	The full wording of the relevant sentence from paragraph 4.25 of the 2026 guidance is as follows: *Furthermore, they should not simply negate the principal provisions of the DCO and thereby become an impediment to implementation of the project, for example by conferring unfettered plan approval procedures at detailed design stage that could be operated by the statutory undertaker to frustrate delivery of the project.* NH maintains its position that the Applicant's interpretation of that wording is overly simplistic and incorrect, for the reasons set out at paragraphs 2.8 to 2.13 of NH's Deadline 5 Submission [REP5-063], to which the Applicant has failed to respond. To summarise, NH submits that the position is much more nuanced than that presented by the Applicant. The NH PPs do not "simply negate" the principal provisions of the DCO. Instead, they put in place a precedented framework of controls around those provisions, which ensures that NH is afforded an appropriate level of oversight and input in relation to activities which could interfere with its statutory undertaking. These provisions have been incorporated into NH protective provisions on a number of comparable schemes without causing an impediment or frustrating the delivery of the relevant projects. NH sees no reason why they should not be incorporated here. The provisions proposed by NH at para 7(2) of the protective provisions would be subject to the requirements under para 7(4), preventing NH from unreasonably withholding or delaying its approval and to provide a statement of reasons for any refusal of consent. As such, the provisions proposed under para 7(2) by NH clearly do not amount to an unfettered plan approval procedure.

		Furthermore, NH is not a private developer, but a publicly owned Strategic Highway Authority. It is under a statutory duty to cooperate with third parties exercising planning or highways functions, including the Applicant in relation to the Proposed Development. The notion that NH would veto the Applicant's powers unreasonably is a fundamental misunderstanding of NH's statutory role in the development process. It is also noted that, in direct contrast to the 2024 guidance, paragraph 4.26 of the 2026 guidance expressly confirms that provisions exempting statutory undertaker land from "broad compulsory acquisition provisions" in the DCO "may be acceptable" if the applicant can demonstrate that the necessary land interests and rights have been, or will be, obtained by agreement. In this regard, NH continues to engage with the Applicant and sees no reason why agreement cannot be reached in due course. This is discussed in further detail below.
2.17	The Applicant did include protective provisions for the protection of NH in the draft DCO submitted with the DCO application [APP-016]. These provisions are precedented, and the Applicant notes that similar approaches were taken in the protective provisions for NH's benefit contained in the HyNet Carbon Dioxide Pipeline Order 2024 and the Southampton to London Pipeline Development Consent Order 2020, both of which involved similar interfaces with NH assets to those proposed by this Scheme. Having regard to those precedents, the Applicant adopted the reasonable view that they would be appropriate for inclusion in this case, and were selected on the basis of the similarly limited interface between the Scheme and the Strategic Road Network (SRN) in this case. NH has since insisted upon a different form of protective provisions, which the Applicant has always regarded to be unjustified in a number of respects given the limited interface between the Scheme and the SRN. Notwithstanding, the Applicant has worked with NH's legal representatives and this	NH does not accept the recollection of events presented by the Applicant. NH has not insisted on a different form of protective provisions and has been consistently negotiating the same version from the beginning of the examination. NH made repeated attempts to engage with the Applicant on protective provisions before and after submission of the DCO application. It was only after several chasers that we were finally put in touch with the Applicant's legal representatives. This was after the Applicant had submitted its DCO application and incorporated a version that it had substantially amended into its dDCO. Had the Applicant engaged with NH prior to submission of the application (as they should have done), they would have known NH's position on the protective provisions from the outset. NH does not accept that the protective provisions included in the application draft DCO for NH's benefit were precedented for a scheme of this nature. In fact, they are quite the opposite.

	has resulted in a substantial narrowing of the issues of disagreement between the parties. It is not unusual for issues to be discussed and resolved during the course of a DCO examination. In this regard, NH's reference to the evolution in position regarding plots 10/21 and 11/25 only serves to underscore the degree to which the Applicant has sought to work collaboratively with NH to resolve matters.	NH was not involved in negotiating the protective provisions in the Southampton to London Pipeline Order 2020, which were imposed without its agreement. It is further noted that the HyNet Carbon Dioxide Pipeline Order 2024 affords NH materially greater protection than the provisions originally proposed by the Applicant. In any event, both projects concerned major pipeline infrastructure and involved materially different interfaces from the electricity cable works proposed here. The Applicant could instead have drawn on more directly comparable schemes involving electricity cables installed beneath the SRN by HDD, including Great North Road Solar, Fosse Green Solar, Green Hill Solar, Yorkshire Green, Medworth Energy from Waste and the Sheringham Shoal and Dudgeon Extension Projects. Those precedents provide materially stronger protection for NH and would have been recommended for inclusion in the draft DCO by NH, had the Applicant engaged with them ahead of submission. The Applicant's reliance on the Southampton to London Pipeline and HyNet Orders appears selective and does not establish that the application-stage provisions were appropriate or proportionate. NH also rejects the Applicant's continued characterisation of the interface with the SRN as limited. As explained in NH's response at reference 2.1 above, the powers sought under Work Nos. 2 and 8 extend beyond cable installation, and the draft DCO contains no legal control restricting their exercise over NH's land to cabling works. The protective provisions must therefore address the full scope of the powers for which consent is sought, rather than the Applicant's stated intention as to how those powers may be used.
2.19	The Applicant is working to reach a private agreement with NH but despite extensive efforts to date, the parties are still to agree heads of terms for land rights which the Applicant is seeking. Plainly, in these circumstances, at this stage in the examination the Applicant is unable to demonstrate that the necessary land interests and rights have been, or will be, obtained by	NH does not accept the Applicant's conclusion. The delay in progressing heads of terms has been compounded by NH's re-procurement of its land agent. That process is now complete, NH's agent has been instructed, and the heads of terms are being actively progressed.

	agreement with NH for the purposes of paragraph 4.26 of the 2026 guidance. It follows from the terms of paragraph 4.26 that it would not in the ordinary course be acceptable to exempt land belonging to NH from compulsory acquisition provisions. This is consistent with the approach the Applicant is proposing and which NH objects to. For completeness, the Applicant has set out in the Justification for the Applicant's Preferred Protective Provisions [Document Reference 8.23 Revision 3] its case with regards to the application of the tests in sections 127 and 138 of the Planning Act 2008, insofar as those provisions apply to land in which NH has an interest.	NH therefore considers that there remains a reasonable prospect that the necessary land rights will be acquired by agreement. NH's objection to the inclusion of compulsory acquisition powers has always been framed on the basis that those rights should not be granted without commensurate protections afforded to NH in the form of paragraphs 7(2) and 18 of its preferred protective provisions. This would allow NH and the Applicant to agree voluntary terms for the disposal of land/rights to the Applicant, backed up by compulsory acquisition powers granted to the Applicant if voluntary agreement could not be reached. The controls afforded to NH under paragraphs 7(2) and 18 of its protective provisions would allow NH to manage the implementation of compulsory acquisition powers alongside other uses on the network at that time, to ensure coordination and management of network occupancy in a safe and coherent way. NH's controls in these paragraphs have to be exercised reasonably and cannot be delayed. Notwithstanding the above, which is NH's now well precedented and entirely reasonable approach to the application of compulsory acquisition powers on its land, the fact that negotiations are continuing does not change NH's position on serious detriment under the statutory tests in sections 127 and 138 of the Planning Act 2008. NH's position remains as set out in its Deadline 6 Submission [REP6-081]. In summary, the breadth of the powers sought over plot 9/24 is not legally confined to the installation of electrical cabling and, without the protections sought by NH (which are contained in the PPs appended to this submission at Appendix 1), the risk of damage to or disruption of the SRN, coupled with the absence of readily available security to fund urgent remedial works, means that the Secretary of State cannot safely conclude that the acquisition of rights would not cause serious detriment for the purposes of section 127. This conclusion was confirmed by the Secretary of State in the Gatwick North Runway DCO decision, which is discussed in further detail in NH's Deadline 6 Submission.

		NH also maintains that the Applicant has not demonstrated that the proposed extinguishment of NH's rights over the affected plots is necessary for the purposes of section 138. The Applicant's own justification does not overcome those matters.
2.22	The precise wording of Recommendation 28(f) of the Fingleton Review is as follows: "MHCLG should legislate to reinstate the Model Provisions. These Model Provisions, in addition to standard provisions, should include … (f) acceptable protective provisions for statutory undertakers which do not, in accordance with government guidance, negate other provisions of the Development Consent Order (DCO)". First, whilst NH will clearly have an important role in developing any model protective provisions, it is not correct for NH to say that "it would ultimately be for NH to set the requirements of these Model Provisions" when the clear intention is that it would be for MHCLG to bring forward the associated legislation. Therefore, it would ultimately be for the Government to set the requirements, having regard to the views of all relevant stakeholders, including those of developers. Second, the recommendation is for Model Provisions that would be "acceptable in terms of regulating development". This is subtly but crucially different to provisions which would be acceptable to the statutory undertaker concerned. Third, the recommendation clearly advises against the inclusion of provisions which negate the principal provisions of the DCO. In the Applicant's view, the veto provision on the exercise of DCO powers which NH is insisting upon is one which would offend recommendation 29(f) of the Fingleton Review.	NH fundamentally disagrees with the Applicant's selective interpretation of Recommendation 28(f). NH accepts that any model protective provisions would ultimately be introduced by Government following consultation with relevant stakeholders. However, as the strategic highway authority responsible for operating, maintaining and improving the SRN, accountable to the Department for Transport, and as a body subject to statutory duties, licence conditions and regulatory oversight by the Office of Rail and Road, NH's technical and operational requirements would necessarily carry significant weight in the formulation of provisions intended to protect its undertaking. The recommendation does not support the proposition that developers should determine the level of protection which is "acceptable"; rather, it recognises the need for protective provisions which appropriately regulate development while preserving the effectiveness of the DCO. In any event, the recommendation concerns possible future model provisions and is therefore of limited assistance in determining the form of protection required for this Scheme. The present issue must be resolved by reference to the statutory tests, current guidance, the powers actually sought and the risks to NH's undertaking. NH also disagrees with the Applicant's suggestion that paragraph 7(2) would negate the principal provisions of the DCO. The paragraph requires NH's prior approval only before specified powers are exercised on or in relation to the SRN, and that approval may not be unreasonably withheld or delayed. It is therefore a targeted and precedented control, not an unfettered veto. For the reasons set out in NH's Deadline 5 Submission [REP5-063] and its

		responses at references 2.1 and 2.6 above, Recommendation 28(f) provides no basis for omitting paragraph 7(2).
2.24	The Applicant takes a different view on the cause of the protracted negotiations in this case. NH has until recently sought to insist upon a set of protective provisions which are simply inappropriate to the Scheme and the very limited nature of the interface with the strategic road network (a single trenchless crossing of the M180). The Applicant is pleased to note that there has been a narrowing of the issues through productive negotiations with NH's advisers, and this only serves to show that there has in this case been a need to adapt NH's provisions so that they are appropriate and proportionate to the specific application under consideration. Furthermore, a review of the 2009 Model Provisions clearly shows that there was optionality drafted into a number of the model provisions. In the Applicant's view, it would be logical to assume that model protective provisions, if adopted, will also accommodate some flexibility and optionality to reflect the range of projects that might come forward and the varying nature of the interface with statutory undertaker assets that might be involved. NH's case seems to be based on the idea that a one size fits all approach should be adopted for every project. If that is right, the Applicant considers that NH is misguided in this view. It should also be noted that whilst NH seeks to characterise its preferred protective provisions as the "Model Provisions", a review of earlier precedents indicates that far from reflecting a picture of uniformity, there is in fact a great deal of variation in the protective provisions in favour of NH across recently consented DCOs.	NH rejects the Applicant's characterisation of the negotiations. NH provided its standard form protective provisions before the Examination commenced and its substantive position has remained consistent throughout, which is evidenced in its Written Representation [REP1-067], Deadline 4 Submission [REP4-078], Deadline 5 Submission [REP5-063] and Deadline 6 Submission [REP6-081]. To suggest otherwise is factually incorrect and again misrepresents NH's position. The narrowing of issues reflects the ordinary process of negotiation and compromise; it does not demonstrate that NH's original proposals were inappropriate. NH has consistently sought protections directed to the powers actually sought under the DCO (which extend beyond the installation of electrical cabling by HDD) and the risks those powers create for the SRN and road users. NH does not advocate a "one size fits all" approach. Its standard provisions provide a starting point for negotiation and can be tailored where the authorised powers are themselves clearly and legally confined. The central difficulty here is that the Applicant continues to describe the interface as a single trenchless cable crossing, while Work Nos. 2 and 8 confer materially wider powers. Those powers include works on or above the highway, including fencing and boundary works, access and drainage infrastructure, security and monitoring measures and works to existing utility assets. The Applicant has repeatedly resisted changes to the draft DCO which would limit their exercise of powers over NH's land to cable works. The protective provisions must therefore respond to the authorised scope of the works, not merely the Applicant's stated present intention. The Applicant's reliance on North Falls and Five Estuaries is selective. Where NH has agreed provisions distinguishing between "cable works" and "SRN works", including on Green Hill, and

	By way of example, the protective provisions contained in the North Falls Offshore Wind Farm Order 2026 and the Five Estuaries Offshore ne Wind Farm Order 2025 differ materially from the "Model Provisions" advanced by NH. In particular, those Orders distinguish between "cable works", comprising trenchless cable installation works beneath the SRN, and "SRN works", involving substantive works to or alterations of the SRN itself. A number of the key controls and financial obligation apply only to the latter category of works. This reflects a recognition that the level of protection required should reflect the nature of the works and the actual interface with the SRN. The works proposed in respect of this Scheme which interface with the SRN would fall within the definition of "cable works" in those Orders, given that they involve a trenchless cable crossing beneath the SRN with no substantive alteration to the highway network itself. The Protective Provisions for NH's benefit included in the Hynet Carbon Dioxide Pipeline Order 2024 also differ substantially from the "Model Provisions". The Applicant therefore considers it entirely appropriate to seek a more proportionate set of protections that reflect the limited extent of the interface with the SRN. Recent DCO precedent demonstrates that such an approach is both well-established and consistent with the principle that protective provisions should be tailored to the particular circumstances of the Scheme, rather than applied on a uniform basis.	Norwich to Tilbury, that distinction has been accompanied by drafting which clearly defines and limits the scope of works that are authorised under each category; importantly, bond requirements apply to both categories. NH would be prepared to discuss a comparable structure here if the Applicant accepted appropriate security which applies to both road works and cable works, as is precedented on a number of recent orders currently before the Secretary of State for decision (e.g. Green Hill Solar Farm). The reference to optionality in the 2009 Model Provisions does not assist. The parties are negotiating scheme-specific protective provisions, and the issue is whether the provisions proposed for this Order adequately protect NH's undertaking. Variation between historic orders is unsurprising and does not establish that the Applicant's preferred provisions are sufficient. For the reasons above and in NH's responses at references 2.1 and 2.17, NH maintains that the full scope of the powers sought requires the protections contained in NH's preferred provisions.
3.1	The Applicant is pleased to note that agreement has been reached with NH on the wording to be included within the definition of "as built information". With respect to the definition of "detailed design information", whilst positive progress has been made in narrowing the points of disagreement, the Applicant remains of the view that certain aspects of the definition extend beyond what is reasonably	NH does not accept that the definition of "detailed design information" should be narrowed by reference to the Applicant's stated intention that no works will be undertaken to the surface of the SRN. As explained above and in previous submissions on behalf of NH, Work Nos. 2 and 8 authorise a materially wider range of works, including works on or above the highway, and the Applicant has resisted amendments which would legally confine the exercise of those powers over NH's land to trenchless cable works.

	required having regard to the nature and scope of the proposed works, which do not involve any works to the surface of the SRN. Whilst the Applicant accepts that the definition only requires information to be provided insofar as it is "relevant" to the specified works, it considers that the categories of information capable of being requested should themselves broadly reflect the nature of the works actually proposed. The Applicant further notes that the definition includes a broad "catch-all" provision enabling NH to request "other such information that may be reasonably required by National Highways to inform the detailed design of the specified works". This is sufficient to ensure that NH can request additional information where reasonably necessary, should it prove necessary at a later date.	The information requirements must therefore be capable of addressing the full scope of the works authorised by the DCO, rather than the more limited works which the Applicant presently says it intends to undertake. The qualification that information is required only insofar as it is "relevant to the specified works" already provides an appropriate and proportionate limitation. Retaining the identified categories gives the undertaker and NH clarity at the detailed design stage and ensures that foreseeable matters affecting the SRN are addressed systematically. The general power to request other information reasonably required is not an adequate substitute: it is intended to address project-specific or unforeseen matters, not to replace express categories of information which are routinely relevant to the design and protection of the SRN. Removing those categories would create unnecessary uncertainty and scope for dispute as to whether particular information falls within the catch-all provision. Accordingly, NH maintains that the agreed definition of "detailed design information" should be as comprehensive as possible to avoid misunderstanding or omissions at a later date, whilst retaining flexibility to waive requirements where not proportionate to the works proposed.
3.1	With regard to the definition of Work No. 2, it is simply not correct to suggest that, if made, the DCO would provide the Applicant with an unrestricted power to carry out Work No. 2 on the SRN. Such a characterisation fails to recognise the extensive controls afforded to NH through the protective provisions for its benefit, which provide NH with significant oversight of the design, construction and certification of the works beneath the SRN. Turning to the works certification process itself, the Applicant can accept the principle of a provisional and final works certification regime. However, it considers that a number of amendments to that regime are necessary. In particular, the	NH does not suggest that the powers in Work No. 2 are wholly unrestricted. NH's position is that Work No. 2 is not confined to trenchless cable installation: it also authorises works on or above the highway, including fencing and boundary treatment, access and drainage infrastructure, security and monitoring measures and works to existing utility assets. Neither the DCO wording, nor any current control in the PPs presented by the Applicant, satisfactorily limits the exercise of those powers over NH's land to cable works. NH welcomes the Applicant's acceptance of a provisional and final certification regime but does not agree that North Falls and Five Estuaries justify omitting a defects period. There are a number of more directly relevant DCO precedents in which NH's protective

	Applicant considers that the provisional and final certification process applicable to cabling works in the protective provisions for NH's benefit in the North Falls Offshore Wind Farm Order 2026 and the Five Estuaries Offshore Wind Farm Order 2025 provides an appropriate and proportionate precedent for this Scheme. Whilst those DCOs incorporated a two-stage certification process for cabling works, neither included a separate defects period. The Applicant is not aware of any precedent for the inclusion of a defects period within a certification regime applying solely to cabling works. In addition, the protective provisions already afford extensive protection to NH, including through requirements for condition surveys and obligations on the Applicant to make good any damage identified through the provisional and final condition survey process. In the Applicant's view, the introduction of a separate defects period would duplicate protections that are already secured elsewhere in the protective provisions and would therefore impose an additional layer of process without delivering any corresponding benefit. The Applicant also considers that such an approach would be disproportionate having regard to the nature and scope of the proposed works, which are limited to cabling works beneath, rather than to, the surface of the SRN.	provisions include a defects period for cable works, including the Fosse Green Solar, Green Hill Solar and Norwich to Tilbury. The Applicant's assertion that no such precedent exists is therefore unsupported. A defects period also serves a distinct purpose from condition surveys and the provisional and final certification stages. The latter identify the condition of the SRN and provide certification at particular points in time whereas a defects period ensures that latent or subsequently emerging defects attributable to the specified works remain the undertaker's responsibility for an appropriate period after completion. That protection is particularly important for trenchless works beneath the SRN, where defects such as settlement or subsidence may not be apparent immediately. It does not duplicate the obligation to remedy identified damage. In any event, the Applicant's proportionality case again proceeds on the incorrect premise that the authorised works are limited to cabling. This is simply not reflected by the DCO wording which would authorise a much wider scope of works to be carried out on NH's land. NH therefore maintains that the provisional and final certification process and the defects period set out in in its preferred protective provisions, should be retained.
3.1	The Applicant agrees with the principle that NH should not bear the risk of the Applicant failing to complete, or failing to complete to the requisite standard, works that may affect the SRN. However, the protective provisions currently under negotiation already contain extensive financial safeguards in NH's favour, including comprehensive indemnity provisions, obligations requiring the Applicant to remedy any damage identified through the condition survey process at its own cost (or to reimburse NH for the costs of doing so where the Applicant fails	The Applicant's acceptance that NH should not bear the risk of incomplete or defective works is welcomed. The indemnity, remediation and insurance provisions relied upon by the Applicant do not provide equivalent protection. An indemnity is a contractual right of recovery which may require liability to be established and pursued after the event; insurance responds only within its terms and may not provide NH with direct or immediate recourse – and in any event is in this case limited to public liability (e.g. injury to persons and not NH's infrastructure); and a remediation obligation is of limited practical assistance where

	to undertake the remedial works itself), and substantial insurance requirements. The Applicant further notes that, in the protective provisions benefiting NH contained in the North Falls Offshore Wind Farm Order 2026 and the Five Estuaries Offshore Wind Farm Order 2025, the requirement to provide a security bond did not apply to "cable works". As noted elsewhere in this Table, the works proposed beneath the SRN as part of the Scheme would fall within the definition of "cable works" in those Orders. In those circumstances, the Applicant does not consider it has been demonstrated that a security bond is reasonably necessary to protect NH's interests in this case. The combination of indemnity, remediation and insurance obligations already provides NH with substantial protection against the risks NH identifies. Further, recent DCO precedent demonstrates that, for analogous trenchless cable crossings beneath the SRN, a security bond has not been regarded as necessary. The Applicant therefore considers that the inclusion of a bond requirement would be disproportionate in light of both the limited nature of the proposed works and the extensive financial safeguards already contained within the protective provisions.	urgent intervention is required or the undertaker fails, or is unable, to act. None of these provisions provide NH with a readily accessible fund from which emergency or remedial works can be financed promptly so that disruption to the SRN is avoided or minimised by NH directly – which is ultimately what would be required. As explained in NH's Deadline 6 Submission [REP6-081], damage arising from works beneath or above the SRN, including surface damage, settlement or subsidence, may require immediate action and potential closure of the SRN. Without security, NH and ultimately the public purse would be required to fund the works in the first instance and seek recovery subsequently. That is not an acceptable allocation of risk for works undertaken to facilitate a private development and may also expose NH to reputational and regulatory consequences. The relevance of a bond is therefore not confined to the ultimate recoverability of costs; it is the certainty and immediacy of the funding which it provides in circumstances where NH would not have access to funds in the ordinary course of business to carry out emergency works. The Applicant's reliance on North Falls and Five Estuaries is also misplaced. The protective provisions in those Orders distinguish expressly between defined "cable works" and "SRN works" and legally confine the scope of each category. The present draft DCO contains no equivalent restriction: Work Nos. 2 and 8 authorise works extending beyond trenchless cabling. In addition, there are relevant recent precedents in which security is required for cable works, including Great North Road, Green Hill and Norwich to Tilbury. Precedent therefore does not establish that a bond is unnecessary for this Scheme. The need for a bond is reinforced by section 127 of the Planning Act 2008. In the Gatwick Northern Runway decision, the Examining Authority found, and the Secretary of State agreed, that both a bond and an uncapped indemnity were necessary to avoid serious detriment and that a public sector body should not be left to fund a

		private sector burden. NH's Deadline 6 Submission [REP6-081] explains why the same principle is engaged here: the rights sought over plot 9/24 are not legally confined to cabling, the SRN cannot be replaced by other land, and the consequences of defective works without immediately available security may include prolonged closure and serious detriment to NH's undertaking. Accordingly, the other financial protections are complementary to, not substitutes for, the bond, and NH maintains its position that a bond is necessary and proportionate.
4.2	The Applicant categorically disagrees. It is striking that NH urges a more proportionate approach yet has until recently insisted upon a set of protective provisions which are unsuitable for the specific interface with the strategic road network in this case, which is on any understanding minimal. The Applicant has not been overly legalistic or selective in interpreting precedent and guidance. Rather, it simply takes a different view to NH on the correct interpretation of precedent and guidance, which the Applicant regards as being more closely aligned with emerging approaches given in particular the recommendations arising from the Fingleton Review. Finally, NH's reference to costs highlights the difficult position in which the Applicant and other developers find themselves: either accept unsuitable and onerous provisions at a lower cost, in the short term at least, or challenge NH's position on reasonable grounds, yet face exposure to substantial costs for doing so, much of which could have been avoided had NH adopted a more proportionate approach at the outset.	NH rejects the Applicant's suggestion that its position has recently changed. NH provided its standard form protective provisions before the Examination commenced and has pursued the same substantive protections throughout, which is evidenced in its Written Representation [REP1-067], Deadline 4 Submission [REP4-078], Deadline 5 Submission [REP5-063] and Deadline 6 Submission [REP6-081]. The narrowing of issues reflects the normal process of negotiation and compromise; it does not establish that NH's original position was unsuitable or disproportionate. Nor is the interface properly described as "minimal". The Applicant relies repeatedly on its stated intention to undertake a single HDD cable crossing, but Work Nos. 2 and 8 confer materially wider powers over NH's land and the Applicant has resisted amendments which would legally confine those powers to cable works. The proportionality of the protective provisions must be assessed against the powers for which consent is sought, rather than the Applicant's present description of how it intends to exercise them. NH also does not accept that the Applicant's position is more closely aligned with precedent or the Fingleton Review. The Review concerns potential future model provisions and does not displace the need to determine the protection required for this scheme by reference to the current DCO, guidance, statutory tests and risks to the SRN. The weight of relevant precedent is against

		the Applicant's position. Recent schemes including Green Hill, Lime Down, Great North Road, Norwich to Tilbury, Medworth, the Sheringham Shoal and Dudgeon Extension Projects, Gatwick Northern Runway and Luton provide materially stronger protections for NH. The Applicant's continued reliance on a small number of differently drafted orders, relating to materially different schemes, is neither persuasive nor reasonable when considered against the much wider body of decisions that sits in favour of NH's proposed provisions in relation to directly comparable precedents. NH's reference to costs was not intended to inhibit proper scrutiny or legitimate disagreement. It reflected the additional time and expense caused by the need to restate established points and negotiate protections which are well precedented and directed to the powers actually sought. Applicants remain free to challenge NH's position, but the fact that doing so incurs costs does not demonstrate that NH's requirements are unreasonable. NH has engaged throughout, has resolved or narrowed a substantial number of matters and remains willing to consider scheme-specific drafting where the authorised powers and accompanying safeguards are defined consistently. The unresolved issues remain because the Applicant continues to seek broad powers while resisting protections which NH considers necessary for the safe operation and protection of the SRN.

3. NH Response to Justification for the Applicant's preferred protective provisions (Rev 3) [REP6-045]

3.1 The table below sets out NH's response to the relevant parts of [REP6-045]:

Reference	Applicant comment	NH response
4.23	In addition, the Applicant is also proposing to submit a without prejudice version of the protective provisions for NH's benefit at Deadline 8. This version will clearly identify, by reference to Table 5, drafting sought by NH as against that sought by the	NH understand this position has now been superseded and the Applicant will only be presenting a version of the PPs in the final DCO. This version represents the most advanced version of the PPs in negotiation between the parties. NH will be providing its

	Applicant. This will enable the decision maker to incorporate such drafting as it considers appropriate (to the extent this differs from the provisions to be included in Schedule 14, Part 7 at Deadline 8), following consideration of the positions advanced by each party during the course of the examination. In all other respects, the without prejudice version of the protective provisions will be the same as that to be included in Schedule 14, Part 7 of the Draft DCO at Deadline 8.	preferred PPs appended to this submission (Appendix 1) with a tracked changed version, showing the amendments which NH requires to the final DCO version (Part 7 of Schedule 14) (see Appendix 2 of this submission).
Table 5 (The need for a provisional and final certification process, with defects period)	The Applicant can accept the principle of a provisional and final works certification process. However, it has proposed a number of amendments based on the works certification regime which applies to cabling works as set out in the North Falls Offshore Wind Farm Order 2026 and Five Estuaries Offshore Wind Farm Order 2025, both of which adopted a modified provisional and final certification process for cabling works beneath the SRN and therefore provide an appropriate and proportionate precedent for this Scheme. Whilst those certification processes incorporated a two-stage works certification process, neither included an additional defects period. The Applicant is not aware of any precedent for the inclusion of a defects period within a certification regime that applies to cabling works only. In addition, the protective provisions already provide extensive protections for National Highways' benefit, including requirements for condition surveys and obligations on the Applicant to make good any damage identified through the provisional and final condition survey process. In the Applicant's view, the introduction of a separate defects period would duplicate protections that are already secured elsewhere in the protective provisions and would therefore impose an additional layer of process without delivering any corresponding benefit.	We have reviewed the Applicant's amendments to the NH protective provisions and can agree the limitation of the defects liability period to road works only on this occasion. This change will be reflected in the Applicant's version of the NH protective provisions submitted with the final dDCO at Deadline 8 and in the copy of the NH protective provisions which NH is recommending for inclusion on any made order at Appendix 1 of this submission.

4. NH Response to the Applicant's Response to Deadline 6 Submissions [REP7-003]

4.1 The table below sets out NH's response to the relevant parts of [REP7-003]:

Reference	Applicant comment	NH response
3.2	The Applicant notes NH's comments. However, the Applicant maintains its previously expressed position that the protective provisions in Schedule 14, Part 7 of the draft DCO [REP6-002] provide a comprehensive level of protection for NH, commensurate with the specific and limited interfaces between the Scheme and the strategic road network in this case. The Applicant does not agree that the inclusion of those provisions in the made Order would result in serious detriment to NH. In this regard, the Applicant notes that similar protective provisions have been included for NH's benefit in other made DCOs, including the HyNet Carbon Dioxide Pipeline Order 2024 and the Southampton to London Pipeline Development Consent Order 2020, in circumstances involving interfaces with the strategic road network comparable to those arising in respect of the Scheme. The Applicant does not therefore accept that the protective provisions currently included in the draft DCO would result in serious detriment to NH's ability to carry on its statutory undertaking, in accordance with the test laid out in section 127 of the Planning Act 2008. Notwithstanding this position, the Applicant remains in discussions with NH with a view to further narrowing any outstanding areas of disagreement on the protective provisions. Positive progress has been made to date in this regard, and the Applicant remains confident that further progress can be made prior to the close of the Examination. The Applicant's final position in respect of the protective provisions will be provided at Deadline 8.	NH directs the ExA to the responses above and Paragraph 3.1 (DCO 9.9) of NH's Deadline 6 Submission [REP6-081] which details NH's submission on serious detriment, which is not repeated.
3.3	The Applicant confirms that plot 10/26 includes the eastern embankment of the bridge, however National Highways do not own plot 10/26 and neither the Applicant nor the landowner have identified that National Highways have any interest or rights over plot 10/26 (including the embankment). The Order would authorise Works Nos. 2	NH's position on this matter is that irrespective of who owns or has rights over 10/26, the presence of the supporting embankment to the overbridge represents a potential safety concern if the Applicant intends to carry out cabling works in close vicinity to the overbridge embankment. NH has been

	and 8 to be carried out and maintained within this area, as shown on the Works Plans [REP4-002]. The Applicant notes from National Highway's submission at Deadline 4 [REP4-078] that NH was investigating the nature of its interest in plot 10/26, however the Applicant has not yet received confirmation on this from National Highways. The Applicant would welcome clarification from National Highways as to what rights it has over this land, if any.	attempting to obtain details from the Applicant about the proximity of the proposed cable works in this plot to the embankment, but no details have been forthcoming. Whilst it is recognised that cable works in 10/26 are unlikely to constitute a specified work for the purposes of the NH protective provisions – unless it can be established that NH has a land interest in 10/26 – it should be recognised by the Applicant that works in close proximity to the overbridge embankment require close attention and adherence to CD622 geotechnical standards.
5.2	The Applicant categorically disagrees with the statement that it has made no attempts to respond to the concerns raised by NH. The Applicant has set out its position, in detail, on this matter in the following documents: • Response to Relevant Representations [REP1-043] (Table 8-1, in response to paragraph/section 6 of NH's Relevant Representation [RR-022]); • Responses to Written Representations [REP2-088] (Table 1, in response to paragraph/section 9 of NH's written representation [REP1-067]); and • Statement of Common Ground with National Highways [REP4-070] (Table 3- 1, ref. 9) • Applicant Response to Deadline 4 Submissions [REPP5-042] (Table 5.2) As explained in those submissions, the Applicant considers that the relevant planning authority is the appropriate approval body for Requirements 5, 8, 9, 11 and 19 of the draft DCO [REP6-002]. This reflects the conventional approach to the discharge of DCO requirements. The Applicant has already accepted that a different approach is appropriate in respect of Requirement 16, under which the relevant highway authority, including NH where relevant, has approval of the CTMP for each phase.	NH does not dispute that the Applicant set out its position in the documents identified. The point is, however, that the Applicant has failed to address NH's remaining concerns regarding the adequacy of consultation alone when dealing with matters which directly engage NH's statutory functions under requirements 5, 8 and 19. Those concerns are set out in detail in the following documents: • NH's Written Representation [REP1-067], (particularly paragraphs 6.2 and 9.1 and the requirement-by-requirement justification at pages 15–19); • the Statement of Common Ground [REP4-070], (Table 3-1, reference 9); • NH's Deadline 4 Submission [REP4-078], (particularly paragraphs 5.2 and 5.3); and • NH's Deadline 6 Submission [REP6-081] (particularly paras 5.2 and 5.3 of Table 1). NH is not seeking a general role in the discharge of planning requirements or to displace the relevant planning authority's functions. Its request is confined to matters affecting the SRN and reflects NH's statutory responsibilities as strategic

	In respect of Requirements 8, 9, 11 and 19, the draft DCO already requires the Applicant to consult NH before the relevant plans are submitted to the planning authority for approval. This ensures that NH has an opportunity to consider and comment upon matters relevant to its statutory functions and that those comments can be considered and, where appropriate, addressed before an application for approval is made. The Applicant therefore does not accept that NH having a consultative rather than approving role prevents its legitimate interests from being properly taken into account. Crucially, NH has still not identified any clear Scheme specific reason why those consultation rights are insufficient or why it additionally requires the status of an approving authority. The approach adopted in the draft DCO, whereby NH is consulted on matters relevant to its interests but the relevant planning authority remains the approving authority, reflects the well-established and widely precedented approach, where NH is a consultee in respect of equivalent DCO Requirements. It remains particularly noteworthy that NH has not identified any directly relevant DCO precedent in which it has been afforded equivalent approval rights. Nor has NH identified any evidence that the established approach, under which it is consulted rather than given approval functions, has proved inadequate on other schemes, or explained why the circumstances of this Scheme require a departure from that approach. To the extent that examples have now been identified involving approval functions being afforded to other statutory undertakers, those examples concern highly specific circumstances and do not establish any general principle that a statutory undertaker should be given approval rights under DCO Requirements simply because its interests may be affected by the authorised development. That absence of precedent is significant because the powers sought by NH would confer a substantial additional degree of control over the implementation of the Scheme. NH is not simply seeking to ensure that it is consulted and that its representations are properly considered. It is seeking a further approval role in respect of matters for which the draft DCO already identifies the relevant planning authority as the	highway authority, traffic authority and street authority, including its duties to maintain the network, protect the safety of road users and secure the expeditious movement of traffic. Those responsibilities cannot be delegated to, or discharged by, a local planning authority. The local planning authorities' competence to determine planning matters is therefore not in issue; the question is whether they are the appropriate body to determine matters requiring specialist assessment of effects on the operation, safety, resilience and future maintenance of the SRN. The need for NH's involvement is scheme-specific. The Proposed Development adjoins the SRN in numerous locations; planting is proposed within close proximity to the SRN and is relied upon to mitigate glint and glare effects on road users; the eventual decommissioning proposals are expected to rely upon the SRN; and Requirement 5 may permit later amendments to documents or details previously approved by NH under Requirement 16. The scheme also includes works beneath the M180 and potentially interacts with NH's programmed renewal works. The Applicant's reliance on consultation is misplaced. Consultation gives NH an opportunity to express a view, but it does not require that view to be accepted, prevent approval contrary to NH's technical advice or provide NH with a determinative safeguard where the relevant planning authority fails to act within the prescribed period. Requirement 22 improves transparency by ensuring that NH's consultation response accompanies the application, but it does not resolve those substantive limitations. Nor is it sufficient to assume that the Applicant will amend its proposals before submission: NH's response may identify an issue which cannot be resolved without redesign, further evidence or refusal.

	appropriate discharging authority. In practical terms, that would introduce a further layer of regulatory oversight and control in circumstances where NH has not demonstrated that the existing mechanisms are inadequate. Furthermore, the local planning authorities have not expressed any concern that they would not be competent to operate as discharging authority in these circumstances. The proportionality of NH's request must also be considered against the protections afforded to NH as a whole. NH would have the benefit of express consultation rights under the relevant Requirements, it would have approval rights under Requirement 16, and it would separately have the benefit of the protective provisions in Schedule 14, Part 7 of the draft DCO. The Applicant considers that these mechanisms provide a comprehensive suite of protections for NH's legitimate interests. This is especially true when the extent of the controls sought is benchmarked against the specific and limited interfaces between the Scheme and NH's interests. Accordingly, the Applicant maintains its firm position that NH has not demonstrated any Scheme specific need, precedent or other justification for the additional approval powers sought. The consultation provisions already included in the draft DCO, together with NH's specific approval role under Requirement 16 and the protections afforded through the protective provisions, provide an appropriate and proportionate level of control having regard to NH's statutory functions and the limited interface between the Scheme and the SRN. The additional approval rights sought by NH are therefore neither necessary nor justified.	The protective provisions do not remove the need for an appropriate approval role under the Requirements. The two regimes perform different functions. The Requirements approve phase-wide plans and mitigation which may affect the SRN, including landscape mitigation and decommissioning arrangements. The protective provisions regulate "specified works" and the exercise of Order powers in relation to NH's land and undertaking. They do not necessarily capture every plan-level decision relevant to road-user safety or network operation. The Applicant cannot rely on the protective provisions as a complete substitute while also resisting the scope and controls sought by NH within those provisions. NH does not accept that the absence of an identical precedent is determinative. DCO requirements are scheme-specific, and precedent cannot override the need for controls justified by the particular powers, interfaces and risks arising here. In any event, the Applicant has accepted the principle that the appropriate highway authority should approve the CTMP under Requirement 16, demonstrating that a specialist approving role is neither novel nor inherently disproportionate. The relevant question is whether the specific subject matter requires NH's approval, not whether an identical formulation appears in another Order. NH has nevertheless continued to take a proportionate approach and has narrowed its position as negotiations have progressed. NH no longer seeks an approval role under Requirement 9 because boundary, mitigation and environmental fencing is now addressed through the detailed design information required under the protective provisions. NH has also agreed that Requirement 11 may remain with the relevant planning authority because the current drafting of article 20 sufficiently prevents use of NH's drainage system without consent. Requirement 16 is agreed. The remaining issues are therefore limited to

		Requirements 5, 8 and 19, insofar as the relevant application affects the SRN. For Requirement 5, where a document or detail was originally approved by NH, any amendment affecting the SRN should return to NH. Otherwise, the draft DCO would permit the relevant planning authority to alter a matter it did not originally approve and for which it may have no operational responsibility. For Requirement 8, NH's approval remains necessary for those elements of the LEMP relied upon to manage glint and glare, road-user safety and planting adjacent to the SRN. For Requirement 19, the condition of the network, traffic baseline and operational constraints at decommissioning cannot now be known; NH must therefore retain an approval role over those aspects of the decommissioning arrangements which rely upon or affect the SRN, much in the same way that the Applicant has accepted it should have approval rights under Requirement 16. Accordingly, the Applicant's description of NH's request as an additional and duplicative layer of regulation is inaccurate. The approval sought is narrowly confined to matters within NH's statutory remit, would operate only where the relevant application affects the SRN. In NH's view, those remaining approval rights are necessary, proportionate and consistent with the overall framework of protection required for the safe and effective operation of the SRN.
5.3.3(a)	The Applicant does not agree with NH's concern. As explained in the Applicant's response above, under the draft DCO Requirements, consultation with NH must take place before the relevant application is submitted to the local planning authority for approval. NH's consultation response will therefore have been received and considered by the Applicant prior to the application being submitted for approval. The subsequent operation of the eight-week determination period does not alter or circumvent that process. NH's suggestion that	NH does not accept that its concern is misplaced. Prior consultation ensures only that NH's response is available before the application is submitted; it does not ensure that NH's technical concerns are resolved, that the relevant planning authority seeks any necessary clarification, or that the application is refused where those concerns remain outstanding.

	deemed discharge could therefore occur without regard having been had to its consultation response is misplaced. In addition, the Applicant does not accept that this concern provides justification for making NH an approving authority. As set out in the Applicant's response above, the Draft DCO adopts the widely precedented approach whereby NH is consulted on matters relevant to its interests, while the relevant planning authority remains the appropriate approving authority. NH has not demonstrated why the possibility of deemed discharge of Requirements, which is precedented in recent solar DCO's, justifies departing from that established approach and conferring additional approval powers upon NH.	The deemed approval mechanism therefore remains material. If the relevant planning authority does not determine the application within the prescribed period, the approval may take effect notwithstanding unresolved NH concerns. The Applicant's obligation to provide the consultation response and draw attention to the determination period does not prevent that outcome. The ability for the relevant planning authority to refuse within eight weeks is not an answer to the risk identified: the concern arises precisely where no determination is made. This is not a generic objection to deemed approval provisions. It is a consequence of applying that mechanism to details which may directly affect the safety and operation of the SRN while leaving NH with only a non-determinative role. The risk is particularly acute under Requirement 8, where planting is relied upon to reduce glint and glare effects on the M180 and its establishment, species, positioning and long-term maintenance may be material to road-user safety. NH's requested approval role is limited to the aspects of the relevant application affecting the SRN and would be exercised reasonably and without delay. It would ensure that a matter within NH's statutory remit cannot be treated as approved by default without NH being satisfied that the SRN and its users are appropriately protected. NH therefore maintains that the deemed approval provisions reinforce, rather than displace, the case for its limited approval role under Requirement 8.
5.3.4(a)	The Applicant notes that the comments relate to fencing and awaits NH's response at Deadline 7.	NH has agreed with the Applicant that the inclusion of "boundary, mitigation and environmental fencing" within the definition of "detailed design information" in paragraph 2(2) of the protective provisions for the benefit of NH in this case provides sufficient protection for NH such that an NH approval right over Requirement 9 is no longer required. NH

		is content with the current drafting of Requirement 9 as included in the dDCO submitted at Deadline 6 [REP6-002].
5.3.5(a)	The Applicant notes that the comments relate to drainage matters and awaits NH's response at Deadline 7.	NH has agreed with the Applicant that the Applicant's powers under article 20 are sufficiently narrow as to prevent use of NH's highway drainage system without consent. NH is content with the current wording of Requirement 11 such that an NH-specific approval right is no longer required. NH is content with the current drafting of Requirement 11 as included in the dDCO submitted at Deadline 6 [REP6-002].

5. Summary of NH's position at the close of examination

5.1 NH makes this submission to summarise the current status of its objection to the Proposed Development. This section will draw upon matters which remain to be addressed to NH's satisfaction which have been set out in detail throughout the course of the examination in the following submissions:

5.1.1 Relevant Representation of National Highways Limited [RR-022];

5.1.2 Written Representation of National Highways Limited [REP1-067];

5.1.3 NH's Deadline 4 Submission [REP4-078];

5.1.4 NH's Deadline 5 Submission [REP5-063]; and

5.1.5 NH's Deadline 6 Submission [REP6-081];

5.2 Despite considerable engagement between the parties, it has not been possible to close out all outstanding issues by the close of examination. Whilst significant progress has been made, the following matters remain under discussion and the parties will endeavour to continue efforts to resolve matters which are yet to be agreed. Where agreement on outstanding matters is reached, the parties will write to the Secretary of State directly after the close of the examination to update the position.

<u>Protective Provisions</u>

5.3 There are currently two versions of the NH protective provisions which are before the ExA:

5.3.1 The Applicant's preferred version which can be found at Part 7 of Schedule 14 of the dDCO submitted at D8 which are **not agreed** by NH; and

5.3.2 The NH preferred version, which can be found appended to this submission. To assist the ExA, we have included two copies:

(a) Appendix 1, which contains the NH preferred protective provisions at D8 for recommendation to the Secretary of State; and

(b) Appendix 2, which contains a track changed version of Appendix 1 against the Applicant's preferred version in Part 7 of Schedule 14 of the dDCO submitted at D8 to show the amendments which NH is seeking to the submitted order-facing version;

5.3.3 NH respectfully requests that the ExA recommends to the Secretary of State that the version found at Appendix 1 is included in any made order for the Project. We set out the justification for these amendments below, focussing on the key provisions only.

Paragraph 2(2) – "Bond Sum" and Paragraph 15 – "Security"

5.4 The parties have agreed that the NH protective provisions should be split between "road works" and "cable works" which adopts the same approach that NH is taking on the vast majority of solar schemes before the Secretary of State (e.g. Green Hill Solar Farm, Lime Down Solar Farm) as well as those energy projects which include cable and non-cable elements affecting the SRN (e.g. Norwich to Tilbury). Where "specified works" is used in the protective provisions, the intention is that the applicable provision applies to both "road works" and "cable works". The principle of this split is acceptable to NH.

5.5 However, the primary disagreement between the parties is in relation to the standard of protection that should apply to the "road works" and "cable works" respectively. Whilst NH is willing to accept that a lesser degree of certification should apply to the "cable works" and that the provisions of paragraph 13 ("Defects Period") should not apply to "cable works" at all given the protection that exists elsewhere in the drafting, in NH's view there should be no distinction between "road works" and "cable works" when it comes to the security that is afforded to NH in the event that the works result in damage to the SRN. The same suite of security provisions (e.g. the bond) should apply to both "road works" and "cable works". This is the precedented position in Green Hill Solar Farm, Lime Down Solar Farm, Fosse Green Solar Farm, Norwich to Tilbury, Sheringham and Dudgeon Extension, Medworth Energy from Waste, HyNet Carbon Dioxide Pipeline. Indeed, the only precedent which the Applicant relies upon to establish the contrary position is North Falls Offshore Wind Farm and Five Estuaries Offshore Wind Farm. Both of these schemes were consented 6 months apart and are essentially two halves of the same project. They exist in the same geographical location, connect to the same substation (the East Anglia Connection Node, to be consented under Norwich to Tilbury) and were promoted in very close partnership. These two precedents should not be seen as distinct orders which were consented separately – to all intents and purposes, these two projects are the same scheme. Whilst a bond for the cable works was not imposed in that scheme, NH was unrepresented in that case and this matter represents an anomaly that should not be repeated. To do so would expose the public sector to unnecessary and unjustified financial risk.

5.6 The corollary of the North Falls/Five Estuaries position (and the position which is advocated by the Applicant) would be to ask the taxpayer to cover the cost of damage to the SRN (a publicly owned and operated asset) that were to arise as a result of a development being promoted by a private

developer. The recommendation report and Secretary of State decision letter in the Gatwick Airport Northern Runway DCO on this issue are both clear – it is not appropriate for a public sector agency to potentially fund a private sector burden and both the bond and an uncapped indemnity are necessary to avoid serious detriment to the carrying on of NH's undertaking under section 127 of the Planning Act 2008.[1][2] Accordingly NH respectfully requests that its drafting in Paragraph 2(2) and Paragraph 15 of the NH preferred protective provisions at Appendix 1 are recommended into any made development consent order.

Paragraph 2(2) – "Specified Works"

5.7 NH's amendment to the definition of "Specified Works" reflects the precedented form of wording across various orders before the Secretary of State or which have been made, including Green Hill Solar Farm, Lime Down Solar Farm, Fosse Green Solar Farm, Norwich to Tilbury, Sheringham and Dudgeon Extension, Medworth Energy from Waste and HyNet Carbon Dioxide Pipeline. The need for the PPs to apply to land in which NH has an interest is to ensure that the provisions in paragraph 7(3) apply to land that is not specifically designated at strategic road network. For example, where NH requires controls over the Applicant's tree felling powers in relation to land which has been secured for BNG purposes on other third party schemes (or NH's own projects), this will be on land that NH has an interest in but is not necessarily verge adjacent to the highway itself.

Paragraph 7 – "Prior Approvals"

5.8 NH's amendments align identically with the agreed approach in the Green Hill Solar Farm and Lime Down Solar Farm orders. The intention here is to split out the undertaker's obligations for prior approvals as between "road works" and "cable works". This places a reduced burden on the undertaker in relation to "cable works" which is what the Applicant has always requested. Paragraph 7(3) includes the "veto provisions" which are well litigated in submissions between the parties (paragraph 7(3) being the equivalent of paragraph 7(2) in the version of the NH PPs previously submitted into the Examination by NH).

5.9 NH has reduced this list down to those which it absolutely requires and has removed those provisions which create excess duplication or which are satisfactorily addressed through other controls. NH maintains its position that this paragraph is not intended to "veto" the undertaker's use of powers under the order. It is intended to place guardrails on the use of those powers and enable NH to understand when powers need to be exercised so that it can safely manage the interests of the various stakeholders which may also be using the network at that time (e.g. NH maintenance contractors, utilities contractors, DBFO contractors, the police and emergency services). In relation to this provision applying over land in which NH has an interest (e.g. Category 2 land), NH requires this because the undertaker may be exercising powers over land which has been safeguarded by NH for other purposes and thus in order to give the consent to exercise the powers, an agreement would need to be reached to re-provide those purposes. A key example of this would be tree planting for BNG. Were the Applicant able to exercise tree felling powers without NH's oversight, this could result in NH breaching a conservation covenant which it had entered into with another statutory stakeholder.

5.10 In short, all NH is requesting is that where powers are to be exercised on NH's land, NH is given advanced sight to ensure that the exercise of that power would not cut across something which has otherwise been legally secured. Any consent given or refused by NH must not by unreasonably

[1] TR020005-003943-Gatwick Airport Recommendation Report - FINAL.pdf – Paragraph 21.7.15
[2] TR020005-004237-GATWICK AIRPORT NORTHERN RUNWAY DCO - Decision Letter - 21 September 2025.pdf - Paragraph 442.

withheld or delayed, must be given in writing and any refusal must be accompanied by a statement of reasons. This position is consistent with the agreed drafting in the NH protective provisions in the Green Hill Solar Farm and Lime Down Solar Farm orders.

Paragraph 14 – "Final Certificate"

5.11 NH's minor amendments here simply make clear that the undertaker may apply for final certificates for "cable works" and for "road works" separately if they wish. NH's amendments also make clear that the final certification process applies to both "cable works" and "road works". This is consistent with the agreed drafting in the NH protective provisions in the Green Hill Solar Farm and Lime Down Solar Farm orders.

Paragraph 17 – "Insurance"

5.12 NH would refer the ExA to the agreed draft development consent orders for Green Hill Solar Farm, Lime Down Solar Farm and Fosse Green Solar Farm, the applicants for which have all agreed to place public liability insurance of up to £50,000,000. We consider that this is now a well precedented position which appropriately covers the potential public liability risk that NH could be exposed to and thus protects the public purse from liability arising from a private development.

Paragraph 20 – "Land"

5.13 NH's position on paragraph 20 is now well documented and litigated throughout submissions made during the course of the examination. NH's position is now well precedented across many orders including in Green Hill Solar Farm, Lime Down Solar Farm, Fosse Green Solar Farm, Norwich to Tilbury, Sheringham and Dudgeon Extension, Medworth Energy from Waste, Yorkshire Green and Viking CCS Pipeline. The purpose of the provision is to ensure that NH's legal team is made aware of the progress of the implementation of the undertaker's CA powers and to give consent (not to be unreasonably withheld or delayed) in relation to the use of such powers over NH operational land. This enables NH to exercise proportionate controls over the use of CA powers on its network. NH does not use this provision to veto the use of CA powers and in any event, the use of CA powers is in this case considered very unlikely given that NH is perfectly willing to grant the necessary rights to the Applicant to facilitate the development. The terms of that voluntary acquisition are under discussion between the parties. On the basis that voluntary acquisition of the necessary interests is very likely, the fact that the wording of the provision does not veto the use of CA powers in the event that they were necessary and the fact that this provision is now very well precedented, NH respectfully requested that paragraph 20 of the protective provisions in Appendix 1 is included in any made development consent order for the Project.

<u>Requirements</u>

5.14 NH is requesting approval rights in respect of Requirements 5 (Approved details and amendments to them), 8 (Landscape and ecology management plan) and 19 (Decommissioning and restoration). NH has agreed to withdraw its submissions requesting an approval right over Requirements 9 (Fencing and other means of enclosure) and 11 (Surface and foul water drainage) on the basis that there exist suitable controls elsewhere in the dDCO.

Requirement 5 (Approved details and amendments to them)

5.15 NH's reasoning for requesting approval rights over Requirement 5 is that NH is already an approving body in relation to the CTMP under Requirement 16 – and would be an approving body in relation to other requirements if the Secretary of State agrees with NH's position. The corollary of that is that NH needs to be the approving body in relation to any amendments made to those approved documents. It would be particularly unusual if the LPA was left to approved details amended in relation to documents (or parts of documents) which it had not approved (e.g. the CTMP in relation to the SRN). The proposed wording which NH recommends in relation to Requirement 5 can be seen in paragraph 9.1 of its Written Representation [REP1-067].

Requirement 8 (Landscape and ecology management plan)

5.16 The residual effects of glint and glare can have substantial impact on the safety of road users and it is of critical importance to NH that the mitigation applied in the LEMP is satisfactory and suitably maintained to enable establishment. The Applicant is also proposing additional planting in existing planting areas in close proximity to the SRN, which would require the approval of NH's environmental team due to the sensitive ecosystem at these locations. Given the alignment of the proposed landscaping mitigation in proximity to the SRN, it is not sufficient for the approving body to be the relevant planning authority alone. Nor is it acceptable for NH to be listed as a consultee. If NH were a consultee, there is no guarantee that any consultation response would be taken account of by the Applicant and implemented. For more details on NH's position in respect of the current drafting of the requirement, please see NH's response to the relevant parts of [REP7-003] at paragraph 4.1 above. Whilst NH appreciates that the PPs require NH's sign-off on landscaping matters at detailed design stage, the approval of the LEMP would concern the key matters of landscaping that NH would be interested in (e.g. siting, density, species and monitoring and management regime). None of these matters are addressed at detailed design stage, so the PPs currently do not cover off NH's concerns. Only a definitive say over the LEMP insofar as it concerns the SRN would alleviate that risk. The proposed wording which NH recommends in relation to Requirement 5 can be seen in paragraph 9.1 of its Written Representation [REP1-067].

5.17 **Requirement 19 (Decommissioning and restoration)**

5.18 NH requires approval rights in respect of Requirement 19 to ensure that traffic management for the decommissioning phase of the authorised development is approved by the relevant authority (e.g. NH in respect of the SRN). The future condition of the SRN and surrounding development context cannot be known as this point in time, so it is important that NH is in a position to approve matters relevant to the decommissioning of the Proposed Development to the extent that that involves reliance on the SRN. For further details of NH's position on the need for approval rights on Requirement 19, please see NH's response to the relevant parts of [REP7-003] at paragraph 4.1 above. The proposed wording which NH recommends in relation to Requirement 19 can be seen in paragraph 9.1 of its Written Representation [REP1-067].

<u>Serious Detriment</u>

5.19 NH's position is as set out in its Deadline 6 Submission [REP6-045].

5.20 NH's overarching position is that the protective provisions currently proposed for the benefit of NH in the final DCO submitted at D8 offer insufficient protection to enable the tests contained in section 127 and 138 of the Planning Act 2008 to be satisfied. More detail in respect of each of these tests is provided below.

Section 127

5.21 Plot 9/24 comprises operational land forming part of the SRN. NH therefore holds an interest in this plot for the purposes of carrying on its statutory undertaking, and section 127 of the Planning Act 2008 is engaged. The Applicant seeks acquisition of permanent rights over this plot and intends to route a cable under the SRN at this location. These works form part of Work No. 2. As noted above, NH additionally awaits further information from the Applicant in respect of plot 10/26.

5.22 Section 127 provides that a DCO may include provision authorising the compulsory acquisition of a right over statutory undertakers' land only to the extent that the Secretary of State is satisfied that the nature and situation of the land are such that either (i) the right can be purchased without serious detriment to the carrying on of the undertaking, or (ii) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

5.23 As explained in NH's Written Representation [REP1-067], any works proposed beneath or above the SRN constitute a potential operational and safety risk and therefore risk serious detriment to NH's undertaking. This detriment would arise if the cabling work caused surface level damage to the carriageway above it, or subsidence, and no bond was in place for NH to access to carry out the emergency works that would be required. The Applicant's position is that no bond will be provided to NH in respect of "cable works".

5.24 If that risk occurred as a result of the "cable works" without a bond being put in place, NH would have no recourse to an available fund that could cover the cost of the work. As such, the SRN would need to be closed in that location until funds were identified to enable the works to be carried out, which could be a potentially significant period of time. Without a bond being provided, NH would be forced to try to recover the cost of repairing the damage through the indemnity provisions, which would only be possible if the undertaker at that point accepted liability under the indemnity and had recourse to funds to pay out under it. None of this could occur quickly and it would be left to the public purse to rectify the damage first to enable the SRN to be reopened to traffic. It cannot be acceptable for the public sector to act as the Proposed Development's financial backstop for damage or defective works to NH's network. As well as financial cost to NH, this poses a substantial reputational risk and could lead to regulatory action for breach of NH's licence conditions.

5.25 As noted in section 3 of NH's Deadline 5 Submission [REP5-063], it is significant that the scope of Work No. 2 is much wider than being restricted simply to the laying of electrical cabling, including matters such as erection of fencing, laying down means of access, provision of security measures and works to existing utility assets. There is nothing otherwise in the draft DCO [REP5-002] to limit the works that may be undertaken within plot 9/24 solely to electrical cabling. As such, whilst the Applicant may maintain that the nature of the works proposed in this area are minimal and confined solely to electrical cabling beneath the carriageway, this position is not currently secured in any way within the DCO, and the form of protective provisions proposed by the Applicant is insufficient to secure appropriate protection for NH and the SRN. In these circumstances and without a bond being put in place that covers the "cable works" in addition to any "road works" that were implemented, there are no grounds on which the Secretary

of State could safely conclude that the Applicant's acquisition of permanent rights over plot 9/24 on the wide terms proposed would not cause serious detriment to NH's undertaking. This conclusion was confirmed by the Secretary of State in the Gatwick Northern Runway DCO decision. In paragraph 21.7.15 of the ExA's recommendation report, the ExA stated that "Whilst the ExA notes the progress made between both parties, it finds both the bond and uncapped indemnity to be necessary to avoid serious detriment to the carrying on of the undertaking under s127 of the PA2008. In this instance, the ExA agrees that it is not appropriate for a public sector agency to potentially fund a private sector burden. As such, in the rDCO the ExA has included the wording as suggested by NH in respect of paragraph 18 of Schedule 9, Part 3".[3] The Secretary of State fully endorsed this position in paragraph 442 of the decision letter, stating that "the Secretary of State has considered and agreed with the ExA [ER 21.7.15] that the inclusion of a bond and uncapped indemnity in the Order, suggested by National Highways in respect of paragraph 18 of Schedule 9, Part 3 is necessary to avoid serious detriment to the carrying on of the undertaking under section 127 of the 2008 Act".[4]

5.26 Nor is it possible for this risk to be made good by NH's use of other land belonging to or available for acquisition by it. No alternative land can replace the existing structure of the SRN – it cannot be re-provided or relocated elsewhere.

5.27 In light of the above, NH does not consider that the test set out in section 127 can be satisfied in respect of plot 9/24, in the absence of adequate controls within the NH PPs.

Section 138

5.28 Additionally, there are various plots (7/7, 7/13, 7/14, 7/17, 11/22, 11/24, 12/6, 12/8, 12/9, 12/10, 12/11, 12/12 and 12/13, 12/14 and 12/15) over which NH benefits from rights required for the purposes of its undertaking. Section 138 of the Planning Act is therefore engaged in respect of these plots.

5.29 Section 138 provides that a DCO may include provision for the extinguishment of statutory undertakers' rights only if the Secretary of State is satisfied that the extinguishment is necessary for the purpose of carrying out the relevant development. As yet the Applicant has not provided evidence demonstrating that any proposed extinguishment of these rights (in pursuance of the broad powers conferred by article 35 of the draft DCO) would be necessary for the purposes of the Proposed Development. Again, in the circumstances, NH does not therefore currently consider it is possible to conclude that the test set out in section 138 can be satisfied in respect of these plots.

6 October 2026

[3] Ibid 1 – Paragraph 21.7.15
[4] Ibid 2 – Paragraph 442

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 ORDER 202X

APPENDIX 1

NH PREFERRED PROTECTIVE PROVISIONS AT D8 FOR RECOMMENDATION TO THE SECRETARY OF STATE

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 reasonably necessary, so far as it is relevant to the specified works—

(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 and for cable works, showing the location and depth of the cable as installed and any ancillary or protective measures installed within the strategic road network or land that National Highways has an interest in;

(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 specified works;

(e) method statements for the specified works carried out;

(f) in relation to the road works, 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 condition survey;

(k) in relation to road works, a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;

(l) the health and safety file; and

(m) such other information, as is reasonably required by National Highways.

“bond” means a bond in the form approved by National Highways 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 road works and the cable 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;

“cable works” means any works under this Order which consist of the installation and maintenance of cables, cable ducts, tunnels for cables and cable ducts and related or associated works to those operations under the strategic road network, and to be installed through the use of trenchless installation techniques where no works are required to or on the operational carriageway;

“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 as part of the road works provided under the Order;

“condition survey” means a survey of the condition of National Highways structures and assets within the Order Limits 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 —

a) the road works-

i. site clearance details
ii. boundary, environmental and mitigation fencing;
iii. road restraints systems and supporting road restraint risk appraisal process assessment;
iv. drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;
v. earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
vi. pavement, pavement foundations, kerbs, footways and paved areas;
vii. traffic signs and road markings;
viii. traffic signal equipment and associated signal phasing and timing detail;
ix. road lighting (including columns and brackets);

x. regime of California Bearing Ratio testing;
xi. electrical work for road lighting, traffic signs and signals;
xii. motorway communications as required by DMRB;
xiii. highway structures and any required structural approval in principle;
xiv. landscaping;
xv. any proposed departures from DMRB standards;
xvi. walking, cycling and horse-riding assessment and review report in accordance with DMRB GG142 Designing for walking, cycling and horse riding or any successor document;
xvii. stage 1 and stage 2 road safety audits and exceptions agreed;
xviii. utilities diversions;
xix. topographical survey;
xx. maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
xxi. health and safety information including any asbestos survey required by GG105 or any successor document; and
xxii. other such information that may be required by National Highways to be used to inform the detailed design of the road works;

(b) the cable works-

i. boundary, environmental and mitigation fencing;
ii. drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways
iii. earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
iv. regime of California Bearing Ratio testing;
v. any proposed departures from DMRB standards
vi. utilities diversions;
vii. topographical survey;
viii. maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
ix. technical approval of highway structures under CG3000 of DMRB;
x. health and safety information including any asbestos survey required by GG105 or any successor document; and
xi. other such information that may be required by National Highways to be used to inform the detailed design of the cable 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 specified works 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”;

“road works” means so much of any work including highway works, street works, surveys and signalisation authorised by this Order and including any maintenance of that work, but excluding the cable works, as is undertaken on the strategic road network;

“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 cable works or road works authorised by this Order including any maintenance of that work, as is undertaken on or under 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 may be affected by works authorised by this Order and 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.— No works in carrying out, maintaining or diverting the authorised development may be carried out in, on or over the strategic road network or under it at a distance of less than five (5) metres below the lowest point of the carriageway surface, 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

7.—(1) The road 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 road works comprising of the following details, insofar as considered relevant by National Highways, acting reasonably, 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

(e) 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;

(f) the undertaker has agreed the estimate of the commuted sum with National Highways;

(g) 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 road works (which must include winter maintenance) has been agreed in writing by National Highways;

(h) 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;

(i) 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

(j) 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.

(2) The cable works must not commence until:

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

(b) the detailed design of the cable works comprising the following details insofar as is considered relevant by National Highways has been submitted to and approved by National Highways;

(i) the detailed design information;

(ii) details of the proposed road space bookings and the undertaker is entitled to submit its application for road space bookings at the same time as the relevant details are submitted under sub-paragraph (i) to National Highways;

(iii) a method statement including details of the cable works, equipment and locations;

(c) a survey to determine the appropriate minimum depth for the cable works has been carried out and the minimum cable depth has been approved by National Highways;

(d) the details design of the cable works including supporting geotechnical assessments required by DMRB CD622 Managing Geotechnical Risk and any required strengthened earthworks appraisal form certification has been submitted to and approved by National Highways;

(e) a condition survey and regime of monitoring has been agreed in writing by National Highways;

(f) the CASS01 has been approved by National Highways;

(g) the undertaker has paid to National Highways the estimate of the NH costs notified to it pursuant to paragraph 9(3) of this Part of this Schedule; and

(h) any further information that National Highways may reasonably request within 14 days of the submission to National Highways of the detailed design of any cable works.

(3) The undertaker must not, without the consent of National Highways, exercise the powers to-

(a) article 11 (street works);

(b) article 14 (power to alter layout, etc. of streets);

(c) article 16 (temporary closure or restriction of streets and public rights of way);

(d) article 17 (access to works);

(e) article 19 (traffic regulation measures);

(f) article 22 (authority to survey and investigate the land);

(g) article 23 (compulsory acquisition of land);

(h) article 26 (compulsory acquisition of rights and imposition of restrictive covenants);

(i) article 27 (private rights);

(j) article 32 (rights under or over streets);

(k) article 33 (temporary use of land for constructing the authorised development);

(l) article 34 (temporary use of land for maintaining the authorised development);

(m) article 42 (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, and National Highways may, in connection with any such exercise, require the undertaker to provide details of any proposed road space booking and submit a scheme of traffic management to National Highways for approval.

(4) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (3) 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), (2) or (3).

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

(a) must not be unreasonably withheld or delayed;

(b) must be given in writing; and

(c) may be subject to any reasonable conditions as National Highways considers necessary.

(6) Any refusal by National Highways under this paragraph must be accompanied by a statement of the reasons for refusal.

(7) 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.

(8) 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.

(9) Article 50 (*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) Unless otherwise agreed by National Highways, the undertaker must give National Highways 28 days' notice in writing of the date on which the specified works will start.

(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) in so far as may be applicable 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 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 work.

(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 reasonably 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 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 of works pursuant to paragraph 7(1)(a) 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 reasonably 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 within 28 days of 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 reasonable estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the reasonable 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 reasonably 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 completion of the specified works as set out in the programme of works.

(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 within the strategic road network or in land in which National Highways retains an interest; 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 condition survey 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 subparagraph (3)(b) have been completed to the satisfaction of National Highways;

(c) the as built information has been provided 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.

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 reasonably 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 within 28 days of 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 within 28 days of 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.

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

Defects Period

13. —(1) The undertaker must at its own expense remedy any defects in the strategic road network resulting from the carrying out of the road 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.

(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 a provisional certificate for the road works or the cable works.

(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 to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum.

(2) If at any time the undertaker is in breach of any of the provisions of this Part of this Schedule or becomes insolvent, National Highways shall be entitled upon giving notice to the undertaker to use such parts of the bond sum as National Highways considers necessary and without prejudice to any other remedy which may be available to National Highways.

Commuted Sums

16. (1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with Commuted Lump Sum A Guide for Promoters of Major Third Party Projects dated 28 November 2023 or any successor guidance, prior to the commencement of the road works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provision certificate for the road works.

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 (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 indemnifies National Highways from and against all costs, claims, expenses, damages, losses, and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of, or failure to exercise, any power under this Order (but always excluding any consequential loss or indirect loss suffered by National Highways) within 28 days of an itemised demand subject to sub-paragraphs (2) to (4).

(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of any damage to the extent that it is attributable to the neglect or default of National Highways, its officers, servants, contractors or agents.

(3) National Highways must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(4) National Highways must use its reasonable endeavours to mitigate and to minimise any costs, claims, expenses, damages, losses and to which the indemnity under this paragraph applies where it is within National Highways' reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties outside of National Highways' control.

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 14 days' in advance of the planned commencement date of the maintenance works.

Land

20.—(1) Following completion of the specified works 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 over any land forming part of the strategic road network or land owned by National Highways, other than with the consent of National Highways (such consent not to be unreasonably withheld or delayed) so as to:

(a) acquire new or existing rights in the land;

(b) impose or extinguish any restrictive covenant over the land;

(c) extinguish any existing rights held by National Highways; or

(d) interfere with the apparatus of National Highways

(4) a consent under sub-paragraph (3) must be requested in writing by email to legalservicesinbox@nationalhighways.co.uk.

Expert Determination

21.—(1) Article 45 *(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 all reasonable and commercially prudent 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 45 *(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.

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 ORDER 202X

APPENDIX 2

TRACKED CHANGES SHOWING THE NH PREFERRED PROTECTIVE PROVISIONS IN APPENDIX 1 OVERLAID ONTO THE APPLICANT'S PREFERRED NH PROTECTIVE PROVISIONS INCLUDED AT PART 7 OF SCHEDULE 14 OF THE FINAL DCO SUBMITTED AT D8

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 reasonably necessary, so far as it is relevant to the specified works—

(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 and for cable works, showing the location and depth of the cable as installed and any ancillary or protective measures installed within the strategic road network or land that National Highways has an interest in;

(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 specified works;

(e) method statements for the specified works carried out;

(f) in relation to the road works, 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 condition survey;

(k) in relation to road works, a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;

(l) the health and safety file; and

(m) such other information, as is reasonably required by National Highways.

"bond" means a bond in the~~a~~ form approved by National Highways 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 road works and the cable 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;

"cable works" means any works under this Order which consist of the installation and maintenance of cables, cable ducts, tunnels for cables and cable ducts and related or associated works to those operations under the strategic road network, and to be installed through the use of trenchless installation techniques where no works are required to or on the operational carriageway;

"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 as part of the road works provided under the Order;

"condition survey" means a survey of the condition of National Highways structures and assets within the Order Limits 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 —

a) the road works-

i. site clearance details
ii. boundary, environmental and mitigation fencing;
iii. road restraints systems and supporting road restraint risk appraisal process assessment;
iv. drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;
v. earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
vi. pavement, pavement foundations, kerbs, footways and paved areas;
vii. traffic signs and road markings;
viii. traffic signal equipment and associated signal phasing and timing detail;
ix. road lighting (including columns and brackets);

x. regime of California Bearing Ratio testing;
xi. electrical work for road lighting, traffic signs and signals;
xii. motorway communications as required by DMRB;
xiii. highway structures and any required structural approval in principle;
xiv. landscaping;
xv. any proposed departures from DMRB standards;
xvi. walking, cycling and horse-riding assessment and review report in accordance with DMRB GG142 Designing for walking, cycling and horse riding or any successor document;
xvii. stage 1 and stage 2 road safety audits and exceptions agreed;
xviii. utilities diversions;
xix. topographical survey;
xx. maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
xxi. health and safety information including any asbestos survey required by GG105 or any successor document; and
xxii. other such information that may be ~~reasonably~~ required by National Highways to be used to inform the detailed design of the road works;

(b) the cable works-

i. boundary, environmental and mitigation fencing;
ii. drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways
iii. earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
iv. regime of California Bearing Ratio testing;
v. any proposed departures from DMRB standards
vi. utilities diversions;
vii. topographical survey;
viii. maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
ix. technical approval of highway structures under CG3000 of DMRB;
x. health and safety information including any asbestos survey required by GG105 or any successor document; and
xi. other such information that may be ~~reasonably~~ required by National Highways to be used to inform the detailed design of the cable 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 specified works 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";

"road works" means so much of any work including highway works, street works, surveys and signalisation authorised by this Order and including any maintenance of that work, but excluding the cable works, as is undertaken on the strategic road network;

"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 cable works or road works authorised by this Order including any maintenance of that work, as is undertaken on or under 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 may be affected by works authorised by this Order and 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.— No works in carrying out, maintaining or diverting the authorised development may be carried out in, on or over the strategic road network or under it at a distance of less than five (5) metres below the lowest point of the carriageway surface, 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

7.—(1) The road 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 road works comprising of the following details, insofar as considered relevant by National Highways, acting reasonably, 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

(e) 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;

(f) the undertaker has agreed the estimate of the commuted sum with National Highways;

(g) 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 road works (which must include winter maintenance) has been agreed in writing by National Highways;

(h) 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;

(i) 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

(j) 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.

(2) The cable works must not commence until:

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

(b) the detailed design of the cable works comprising the following details insofar as is considered relevant by National Highways has been submitted to and approved by National Highways;

(i) the detailed design information;

(ii) details of the proposed road space bookings and the undertaker is entitled to submit its application for road space bookings at the same time as the relevant details are submitted under sub-paragraph (i) to National Highways;

(iii) a method statement including details of the cable works, equipment and locations;

(c) a survey to determine the appropriate minimum depth for the cable works has been carried out and the minimum cable depth has been approved by National Highways;

(d) the details design of the cable works including supporting geotechnical assessments required by DMRB CD622 Managing Geotechnical Risk and any required strengthened earthworks appraisal form certification has been submitted to and approved by National Highways;

(e) a condition survey and regime of monitoring has been agreed in writing by National Highways;

(f) the CASS01 has been approved by National Highways;

(g) the undertaker has paid to National Highways the estimate of the NH costs notified to it pursuant to paragraph 9(3) of this Part of this Schedule; and

(h) any further information that National Highways may reasonably request within 14 days of the submission to National Highways of the detailed design of any cable works.

(3) The undertaker must not, without the consent of National Highways, exercise the powers to-

(a) article 11 (street works);

(b) article 14 (power to alter layout, etc. of streets);

(c) article 16 (temporary closure or restriction of streets and public rights of way);

(d) article 17 (access to works);

(e) article 19 (traffic regulation measures);

(f) article 22 (authority to survey and investigate the land);

(g) article 23 (compulsory acquisition of land);

(h) article 26 (compulsory acquisition of rights and imposition of restrictive covenants);

(i) article 27 (private rights);

(j) article 32 (rights under or over streets);

(k) article 33 (temporary use of land for constructing the authorised development);

(l) article 34 (temporary use of land for maintaining the authorised development);

(m) article 42 (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, and National Highways may, in connection with any such exercise, require the undertaker to provide details of any proposed road space booking and submit a scheme of traffic management to National Highways for approval.

(43) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (32) 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), (2) or (32).

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

(a) must not be unreasonably withheld or delayed;

(b) must be given in writing; and

(c) may be subject to any reasonable conditions as National Highways considers necessary.

(65) Any refusal by National Highways under this paragraph must be accompanied by a statement of the reasons for refusal.

(76) 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.

(87) 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.

(98) Article 50 (*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) Unless otherwise agreed by National Highways, the undertaker must give National Highways 28 days' notice in writing of the date on which the specified works will start.

(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) in so far as may be applicable 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 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 work.

(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 reasonably 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 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 of works pursuant to paragraph 7(1)(a) 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 reasonably 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 within 28 days of 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 reasonable estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the reasonable 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 reasonably 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 completion of the specified works as set out in the programme of works.

(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 within the strategic road network or in land in which National Highways retains an interest; 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 condition survey 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 subparagraph (3)(b) have been completed to the satisfaction of National Highways;

(c) the as built information has been provided 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 ~~road~~works.

Opening

~~1.~~ **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 reasonably 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 within 28 days of 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 within 28 days of 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.

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

Defects Period

13. —(1) The undertaker must at its own expense remedy any defects in the strategic road network resulting from the carrying out of the road 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.

(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 a provisional certificate for the road works or the cable works.

(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~~road~~ 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~~road~~ works must not commence until the undertaker procures that the specified ~~road~~ works are secured by the bond 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~~road~~ works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum.

(2) If at any time the undertaker is in breach of any of the provisions of this Part of this Schedule or becomes insolvent, National Highways shall be entitled upon giving notice to the undertaker to use such parts of the bond sum as National Highways considers necessary and without prejudice to any other remedy which may be available to National Highways.

Commuted Sums

16. (1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with Commuted Lump Sum A Guide for Promoters of Major Third Party Projects dated 28 November 2023 or any successor guidance, prior to the commencement of the road works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provision certificate for the road works.

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~~25,000,000~~ (fifty~~twenty five~~ 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 indemnifies National Highways from and against all costs, claims, expenses, damages, losses, and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of, or failure to exercise, any power under this Order (but always excluding any consequential loss or indirect loss suffered by National Highways) within 28 days of an itemised demand subject to sub-paragraphs (2) to (4).

(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of any damage to the extent that it is attributable to the neglect or default of National Highways, its officers, servants, contractors or agents.

(3) National Highways must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(4) National Highways must use its reasonable endeavours to mitigate and to minimise any costs, claims, expenses, damages, losses and to which the indemnity under this paragraph applies where it is within National Highways' reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties outside of National Highways' control.

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 14 days' in advance of the planned commencement date of the maintenance works.

Land

20.—(1) Following completion of the specified works 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 over any land forming part of the strategic road network or land owned by National Highways, other than with the consent of National Highways (such consent not to be unreasonably withheld or delayed) so as to:

(a) acquire new or existing rights in the land;

(b) impose or extinguish any restrictive covenant over the land;

(c) extinguish any existing rights held by National Highways; or

(d) interfere with the apparatus of National Highways

~~(2)~~ (4) a consent under sub-paragraph (3) must be requested in writing by email to legalservicesinbox@nationalhighways.co.uk.

Expert Determination

21.—(1) Article 45 *(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 all reasonable and commercially prudent 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 45 *(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.