

THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010

FOSSE GREEN ENERGY DEVELOPMENT CONSENT ORDER

PINS REFERENCE EN010154

**DEADLINE 3A: NATIONAL HIGHWAYS'
COMMENTS ON SUBMISSIONS MADE BY THE
APPLICANT AT DEADLINE 2**

1 INTRODUCTION

1.1 This is a written submission made on behalf of National Highways (NH) in respect of the Applicant's comments on the Written Representation (REP1-074) submitted on behalf of NH.

2 NATIONAL HIGHWAYS' RESPONSE TO THE APPLICANT'S RESPONSE TO NATIONAL HIGHWAYS' WRITTEN REPRESENTATION

2.1 NH has extracted from the Applicant's response to Written Representations (REP2-030) those responses which respond to National Highways Written Representation (REP1-074). NH has used the same format table as issued by the Applicant with its response provided in the last column to each relevant question.

2.2 Where the Applicant has responded with the same comments as the Applicant's Response to Relevant Representations [REP1-047] and NH indicated its deadline 2 response (REP2 -052) that those responses to the Relevant Representation addressed its concerns, those matters have not been included in the table below to avoid unnecessary repetition.

<u>Theme</u>	<u>National Highways Written Representation</u>	<u>Applicant's Response to National Highways Written Representation</u>	<u>National Highways response</u>
Protecting the SRN	<p>Full details of NH's concerns with regard to works number 6 are set out within paragraphs 4.3- 4.6 of NH's Relevant Representation (RR-201). NH would like to understand if consideration has been given to a single trenchless cable crossing across the A46 trunk road as this option would reduce technical and construction risk on the SRN.</p> <p>NH require further engagement from the Applicant in order to understand the details of the cable crossing (Works No.6), how the cable route will interact with National Highways' assets and to determine if the cable crossing is feasible.</p> <p>The cross-section information provided on ES Figure 3-13 Typical Trenchless Crossings Cross Sections (APP-060) is insufficient to determine the geotechnical risks on the A46 trunk road and its assets, including drainage. Any proposed directional drilling under the SRN will require compliance with The Design Manual for Roads and Bridges (DMRB) Chapter CD622 (Managing Geotechnical Risk). This requirement can be addressed in the protective provisions.</p> <p>All Cable Works will require monitoring and assurance, with safety risks assessed for monitoring and survey works within the proximity of the A46 live carriageway. This requirement can be addressed in the protective provisions.</p>	<p>The Application includes the flexibility for a single trenchless crossing, should the detailed design identify this as being feasible and viable following further geotechnical survey and assessment. The parameters and assessment do not require two trenchless crossings to be built in the event that the Applicant can find a single trenchless crossing solution. This will be explored with NH at the post consent, detailed design stage. At this stage however the Applicant has reserved the right for – and assessed - two crossings, in case a single crossing is not feasible or viable.</p> <p>The Applicant has responded to comments relating to Work No. 6 in Table 2-7, Section 2 on Page 74 of the Applicant's Response to Relevant Representations [REP1-047] as follows:</p> <p>Two trenchless crossing locations, as indicatively shown in Figure 3-12: Indicative Trenchless Crossing Locations of the ES [AS-028], are proposed due to the wide area that the cables originate from. This will decrease the concentration of cables in one area and reduce the overall cable lengths required. The Applicant will work with NH regarding the location of the A46 crossings through the production of a feasibility study for these works. As requested by NH, this study will provide further information on:</p> <ul style="list-style-type: none"> • The cable duct specification (diameter, capacity, and whether multiple cables are proposed for future expansion or redundancy); • The proposed method of installation; and • Any related design or construction details. <p>The design submitted as part of the DCO Application incorporates spatial flexibility within the Proposed Development Parameters [REP1-029] to account for any localised constraints which may be identified later in the process. As such, the purpose of Figure 3-13: Typical Trenchless Crossings Cross Sections of the ES [APP060] is not to demonstrate the specific geotechnical risks on the A46 trunk road at specific crossing locations, since these could vary from location to location. The geotechnical risks (such as the bedrock being hard and therefore challenging to bore through) will be established as part of the detailed design stage once final locations of the trenchless crossing locations are known, aligning with other potential factors that may influence the detailed design (e.g. avoiding archaeological resource). It is confirmed that the Applicant will comply with DMRB Chapter CD622,</p>	<p>The form of protective provisions is now agreed between NH and the Applicant as set out at annex 1 of this submission. We understand the Applicant will be updating the dDCO with the agreed protective provisions within their deadline submission and therefore NH concern is addressed on this point. NH is content to agree the details of the crossing point at detailed design stage which is controlled under the protective provisions. As proposed by the applicant this will include further geotechnical survey and assessment (as part of the DMRB CD622 process) post consent.</p>

		<p>and other relevant requirements for any proposed directional drilling under the NH network. The Applicant will secure these approvals and requirements through the protective provisions to be agreed with NH and inserted into Schedule 14 of the Draft DCO [REP1-007].</p> <p>The Applicant has responded to comments relating to Work No. 6 in Table 2-7, Section 2 on Page 74 of the Applicant's Response to Relevant Representations [REP1-047] as follows:</p> <p>With regards to consideration of the potential impact of drilling upon other SRN assets, such as drainage, it should be noted that a full clash detection exercise would be procured at the detailed design stage, when the design detail for the Proposed Development is more precise. The Framework CEMP [REP1-031] (ref. MAD-C1) notes: "To identify any existing infrastructure constraints, both consultation and a desk-based study will be undertaken prior to construction so that appropriate mitigation such as buffers can be incorporated into the design. Cable Avoidance Tool (CAT) scans will also be used by Contractors to check for buried utilities prior to earth breaking site activities. The Applicant will endeavour to engage with utilities providers as appropriate." The clash detection exercise would be undertaken at the earliest appropriate opportunity during the detailed design stage of the Proposed Development and any NH assets identified would be appropriately avoided by design. Production of a detailed CEMP, which is to be developed substantially in accordance with the Framework plan, is secured under Requirement 12 of the Draft DCO [REP1- 007]. Under the same Requirement, the detailed CEMP is to be submitted to the relevant planning authority (North Kesteven District Council) for approval, in consultation with Lincolnshire County Council, National Highways and the Environment Agency. The construction of the Proposed Development must be carried out in accordance with the approved CEMP.</p> <p>The protective provisions to be included in the DCO for NH apply to "specified works" which are defined as "the installation of underground 33 kilovolt (kV) interconnection cables under the A46 or so much of any work, including highway works and signalisation, authorised by this Order including any maintenance of that work, as is on, in, under or over the strategic road network for which National Highways is the highway authority or land in which National Highways has an interest". No specified works may commence until a condition survey and monitoring regime of any NH assets or structures that NH considers will be affected by the specified works have been agreed with NH.</p> <p>With regard to safety risks, the protective provisions include road safety audits (RSAs) at stages 1, 2 and 3 to be carried out in respect of all specified works. Any recommendations or exceptions raised by the RSAs must be approved by NH. In addition, specified works will be inspected by NH during construction and on practical completion, the latter initiating the process (for the Applicant) of applying for provisional and final certificates to be issued subject to NH approval.</p>	
Landscape Mitigation for Glint and Glare	Some of the receptor points assessed next to the A46 were noted as high without mitigation but lowered to none with mitigation. In terms of the proposed mitigation, NH raised in its Relevant Representation (RR-201) at paragraphs 5.3-5.8 a number of queries on the proposed mitigation and current Landscape and Ecological Management Plan	The Applicant has responded to comments relating to Landscape Mitigation for Glint and Glare in detail in Table 2-7, Section 5 on Page 76 of the Applicant's Response to Relevant Representations [REP1-047].	NH has responded to the Applicant's Response to Relevant Representations (REP1-047) within its deadline 2 submission (REP2 -052) at section 3(5) on page 6. National Highways maintains its position and seeks consultation on requirement 8

	<p>(LEMP). To address NH's concerns, NH seek consultation on the LEMP.</p> <p>NH seek to be consulted on the landscape and ecological management plan for reasons set out in NH's Relevant Representation (RR-201) and paragraph 2.4 of the Written Representation [REP1-074].</p>	<p>Given the measures set out in Table 2-7, Section 5 on Page 76 of the Applicant's Response to Relevant Representations [REP1-047], and secured via the Framework LEMP [AS-122], the Applicant does not consider it to be necessary for National Highways to be included as a consultee within Schedule 2, Requirement 8(1) (Landscape and ecological management plan) of the Draft DCO [REP1-007].</p>	<p>Landscape and ecological management plan) of the Draft DCO (REP1-007) for reasons set out in its deadline 2 response.</p>
Traffic Management Signage	<p>As set out in paragraph 5.13-5.16 of NH's Relevant Representation (RR-201) NH have been unable to locate any reference to proposed signage on the SRN for the routing of construction vehicles. NH would expect such signage to be proposed to assist vehicles in utilising the A46 trunk road to access the Local Road Network (LRN) to ensure the safe and sufficient operation of the SRN and protecting all road users. To address NH's concern in this regard NH would expect to be consulted and provide approval to the construction traffic management plan. Please see our comments at paragraph 2.10(f) of NH Written Representation ([REP1-074]): NH seek to be consulted and provide approval to the CTMP for reasons set out within NH's Relevant Representation (RR-201) and paragraph 2.6 of this representation. Any temporary traffic management signs installed on the A46, require NH approval, a Road Safety Audit (RSA) and a Walking, Cycling, and Horse-Riding Assessment and Review (WCHAR)/ exception certificate. These requirements can be addressed in NH's protective provisions</p>	<p>The Applicant has responded to comments relating to Signage in detail in Table 2-7, Section 8 on Page 79 of the Applicant's Response to Relevant Representations [REP1-047].</p> <p>While signage is not explicitly mentioned in the Framework CTMP [REP1-043], signage will form a key part of the Temporary Traffic Management and will ensure that traffic utilises the designated routes. The Applicant will engage with NH (and LCC for local roads, as necessary) in developing the signage strategy as part of the detailed CTMP. This will include overall signage strategies for routes, including sign locations and sign face details for approval.</p> <p>For clarity, the Framework CTMP [REP1-043] has been updated to include the above text and an updated version is to be submitted to the Examination. This matter has been discussed with NH as part of the SoCG being agreed between the Applicant and NH, whereby NH confirmed on 19 January 2026 that they accept the above and are content for the status of this item to be 'Agreed' within the SoCG. The Applicant and NH will continue discussions to ensure that a final and signed SoCG is submitted at or before Deadline 3A of the Examination (24 March 2026) in line with the Examination Timetable set out at Annex A to the Rule 8 Letter [PD-010].</p> <p>The Applicant has also agreed to add NH as a consultee for the final CTMP under Requirement 14 of Schedule 2 to the Draft DCO [REP1-007]. This was reflected in the updated Draft DCO [REP1-007] submitted to the Examination at Deadline 1.</p> <p>The protective provisions for NH include provision for stage 1, 2 and 3 safety audits. No specified works – including temporary traffic management – may commence until stage 1 and 2 safety audits have been carried out and all recommendations raised through these or any exceptions are approved by NH. Where relevant, detailed design of the specified works must include information demonstrating that the Applicant has undertaken a walking, cycling and horse riding assessment and review process in accordance with DMRB GG142.</p>	<p>NH has responded to comments made by the Applicant in its response to Relevant Representation (REP1-047) within its deadline 2 submission (REP2-052) at section 3(8) on page 8. National Highways maintains its position it seeks an approval role to the CTMP as opposed to consultation.</p> <p>Similar approval roles have been secured for NH on the CTMP in The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 and The Viking CCS Carbon Dioxide Pipeline Order 2025.</p> <p>NH is satisfied that the applicants will ensure RSA's are completed and that WCHAR or exemption certificates are provided where required. This is secured under National Highways agreed protective provisions set out at annex 1.</p>
Construction Traffic Management Plan	<p>As set out at paragraphs 5.17 of NH's Relevant Representation (RR-201) it is stated within the Construction Traffic Management Plan (CTMP) (APP-199) that the proposed A46 North Hykeham Relief roundabout and A46 Newark Bypass are anticipated to be constructed in advance of the Authorised Development peak construction phase year of 2032, and therefore will form part of the future highway network. These network upgrade schemes are not expected to overlap with the proposed construction phase of the Authorised Development which is anticipated to start at its earliest in 2031. However, A46 Newark Bypass has now been consented and timescales for delivery will not be available until March 2026. To address NH's concern, NH would seek to be consulted and provide approval to the CTMP.</p>	<p>The Applicant has responded to comments relating to the Framework Construction Traffic Management Plan in detail in Table 2-7, Section 8 on Page 79 and 80 of the Applicant's Response to Relevant Representations [REP1-047]. An updated version of the Applicant's response regarding NH being consulted on the CTMP is provided below as follows:</p> <p>The Applicant agrees to include National Highways as a consultee within Schedule 2, Requirement 14 and has submitted an updated Draft DCO [REP1-007] to the Examination at Deadline 1. It should be noted that the potential cumulative impact of the Proposed Development in combination with these schemes was considered in the ES. As set out in Appendix 15-A: Long List of Cumulative Developments of the ES [APP-177], the A46 Hykeham Relief Road scheme (ID95) was</p>	<p>NH has responded to comments made by the Applicant in its response to Relevant Representation (REP1-047) within its deadline 2 submission (REP2-052) at section 3(8) on page 8. National Highways maintains its position it seeks an approval role to the CTMP as opposed to consultation.</p> <p>As stated by the Applicant, the current proposed timescale for the A46 Newark Bypass scheme is not expected to give rise to cumulative impact of Fosse Green Energy. Therefore, it was agreed that the proposed operational timescales could be used to inform the cumulative assessment presented in Chapter 13: Traffic and Transport of the ES [APP-038]. However, the delivery timescales for the Newark Bypass have not yet been confirmed as part of RIS3 announcement, and there still</p>

		<p>progressed to the cumulative schemes shortlist in Section 13.10 of Chapter 13: Traffic and Transport of the ES [APP-038], where its potential for a likely significant cumulative effect was considered. However, the scheme is expected to be operational from 2026 and therefore will form part of the future baseline highway network by 2032. On this basis, no cumulative assessment of this scheme was undertaken in Chapter 13: Traffic and Transport of the ES [APP-038] in this regard; an approach which was approved by National Highways with respect to the assessment of the National Highways section of the A46 within the study area.</p> <p>With regards to the Newark Bypass (ID100), as set out in Appendix 15-A: Long List of Cumulative Developments of the ES [APP-177], there is limited potential for the construction phase to overlap with that of the Proposed Development (construction proposed to commence in 2031) even if there are minor delays to ID100, and there is no scope for operational cumulative effects. As such, this cumulative scheme was not progressed to the short list for cumulative assessment within Chapter 13: Traffic and Transport of the ES [APP-038].</p> <p>The Applicant will work with National Highways and LCC with respect to the A46 Newark Bypass and A46 Hykeham Relief Road in the development of the detailed CTMP to coordinate with the delivery of these projects. As stated at paragraph 7.5.2 of the Framework CTMP [REP1-043], the Transport Co-ordinator, who takes responsibility for implementing the CTMP, is required to liaise as appropriate with local transport and traffic groups, local planning authorities and local highway authorities and National Highways. This requirement for liaison will accommodate the collaborative coordination of potential cumulative traffic effects. The Framework CTMP is to be developed into a detailed CTMP, substantially in accordance with the Framework Plan, secured under Requirement 14 of the Draft DCO [REP1-007]. The detailed CTMP will be required to be approved by the relevant authorities before construction commences, with National Highways a prescribed consultee</p>	remains potential for overlap with the Proposed Development. Accordingly, we seek the Applicant's cooperation to ensure that delivery of the authorised development does not compromise this major infrastructure investment. NH's approval role to the CTMP would secure this.
Compulsory Acquisition	The book of reference as submitted by the Applicant identifies 10 plots of land owned or occupied by NH for the purposes of its undertaking ("Plots") in respect of which compulsory acquisition powers to permanently acquire new rights is sought. As set out in paragraph 6 of NH's Relevant Representation (RR-201) six of the ten plots namely, plots 2/7, 4/3, 4/5, 4/10, 4/11 and 4.13, are the A46 trunk road forming part of the SRN. We understand Works no 6 affects these plots. The nature and proposed scope of works remains unclear. To safeguard NH's interests and the safety and integrity of the SRN NH seeks further information from the Applicant to understand how the new rights will interact with National Highways' assets and additional information on the works proposed.	The Applicant has responded to comments relating to this comment in Table 2-7, Section 1 on Page 73 of the Applicant's Response to Relevant Representations [REP1-047]. The Applicant's response is repeated below as follows: Within the plots along the A46 (4/3, 4/5, 4/10, 4/11, 4/13 and 2/7), as per the Book of Reference [AS-115], it is proposed that cable crossings will be provided under the surface of NH land, installed via directional drilling. No direct interaction with the A46 carriageway or interference with the existing rights of NH is proposed. In terms of plots Plot 2/8, 2/10 and 2/11, it is proposed to create construction access C-002 and operational access O-002 (see Figure 3-1: Construction Compound and Access Locations of the ES [AS-021]) onto the public highway within the extents of this plot, and similarly within Plot 4/15 operational access O-003 is proposed to be created. It is not proposed to interfere with the existing rights of NH in either location.	The form of protective provisions is now agreed between NH and the Applicant as set out at annex 1 of this submission. We understand the Applicant will be updating the dDCO with the agreed protective provisions within their deadline submission. Appropriate mechanisms are secured within the protective provisions that require NH's consent before compulsory acquisition powers are exercised. Therefore, NH's concern in this regard is addressed.
Abnormal Loads	NH understand the project will require abnormal loads for specific equipment and materials (elements such as transformers) to the site on the SRN. NH have set out the detail of its requirements and discussions so far with the Applicant in this regard at paragraphs 5.18-5.22 of its Relevant Representation (RR-201).	The Applicant has responded to comments relating to abnormal loads in Table 2-7, Section 9 on Page 80 of the Applicant's Response to Relevant Representations [REP1-047]. An updated version of the Applicant's response is provided below: It should be noted that abnormal loads have been assessed within Chapter 13: Traffic and Transport of the ES [APP-038] (with regards to 'Large Loads'). As noted	NH has responded to comments made by the Applicant in its response to Relevant Representation (REP1-047) within its deadline 2 submission (REP2-052) at section 3(9) on page 10. National Highways maintains its position it seeks an approval role to the CTMP as opposed to consultation.

		<p>in paragraph 13.7.61, all link and junction receptors were judged to have Negligible impacts for Large Loads with the exception of L8 (A46 west of Hykeham Roundabout), which was judged to have a Minor impact in this category. As noted above, the Applicant has included National Highways as a consultee within Schedule 2, Requirement 14 (Construction traffic management plan). The Applicant has submitted an updated version of the Draft DCO [REP1-007] to the Examination at t Deadline 1 reflecting this change.</p> <p>As a result, NH will be a prescribed consultee in respect of the final CTMP, whereby the Applicant will continue to work collaboratively with NH in order to obtain the necessary approvals/permits for access to the Order Limits by abnormal loads. Furthermore, it is noted that the matter of abnormal loads is under discussion with National Highways as part of the SoCG between the Applicant and National Highways. The Applicant will continue discussions on this matter to ensure that the final and signed SoCG with National Highways is available to be submitted at the midpoint of Examination, in line with the Examining Authority's request in its Procedural Decision dated 22 August 2025 [PD-005].</p>	
Draft DCO – Schedule 2 (Requirements)	<p>NH raised comments within its Relevant Representation (RR-201) at paragraph 7.2 about the requirements at schedule 2 of the dDCO, the following remain outstanding:</p> <p>b) Requirement 8- NH seek to be consulted on the landscape and ecological management plan for reasons set out in NH's Relevant Representation (RR201) and paragraph 2.4 of this representation.</p> <p>f) Requirement 14- NH seek to be consulted and provide approval to the CTMP for reasons set out within NH's Relevant Representation (RR-201) and paragraph 2.6 of this representation</p>	<p>Comprehensive responses to these comments have been provided in the appropriate sections of this document and in the Applicant's Response to Relevant Representations [REP1-047]. However, for completeness, the current position is provided below.</p> <p>b) The Applicant does not consider it necessary for NH to be included as a consultee for Requirement 8 (Landscape and ecological management plan) of Schedule 2 for the reasons already set out above.</p> <p>f) The Applicant has agreed to include NH as a consultee under Requirement 14 of Schedule 2 in relation to the Construction Traffic Management Plan.</p>	<p>b) NH has responded to the Applicant's Response to Relevant Representations (REP1-047) within its deadline 2 submission (REP2 -052) at section 3(5) on page 6. National Highways maintains its position and seeks consultation on requirement 8 Landscape and ecological management plan) of the Draft DCO (REP1-007)</p> <p>f) NH has responded to comments made by the Applicant in its response to Relevant Representation (REP1-047) within its deadline 2 submission (REP2-052) at section 3(1b) on page 3. National Highways maintains its position it seeks an approval role to the CTMP as opposed to consultation.</p>
Protective Provisions	<p>Discussions with the Applicant on the protective provisions are also progressing well. Therefore, NH do not propose to detail the articles of concern in the Applicant's Draft DCO in this representation as it is likely from the drafting that has been agreed so far, those concerns will be addressed in the protective provisions that NH expects the Applicant to introduce when it next updates the Draft DCO. NH hope to deliver positive news at the next deadline in relation to the protective provisions however if we cannot finalise negotiations we reserve the right to provide a full response on the articles of concern at the next deadline, and introduce a set of protective provisions that National Highways would ask the ExA to include in its recommended DCO</p>	<p>The Applicant agrees that discussions on the protective provisions are progressing well. The Applicant will include the protective provisions in the Draft DCO [REP1-007] once these are formally agreed.</p>	<p>NH are pleased to confirm the form of protective provisions is now agreed between NH and the Applicant as set out at annex 1 of this submission. We understand the Applicant will be updating the dDCO with the agreed protective provisions within their deadline submission.</p>

PART []
FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.,

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

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

Interpretation

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

(2) In this Part of this Schedule—

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

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

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

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

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

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

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

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

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

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

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

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

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

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction

Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

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

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

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

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

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

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

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

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

“specified works” means the installation of underground 33 kilovolt (kV) interconnection cables under the A46 or so much of any work, including highway works and signalisation, authorised by this Order including any maintenance of that work, as is on, in, under or over the strategic road network for which National Highways is the highway authority or land in which National Highways has an interest;

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

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

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

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

General

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

4.Notwithstanding the limits of deviation permitted pursuant to article 3 (Development consent etc. granted by this Order) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road network unless with the express consent of National Highways

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

Works outside the Order limits

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

Prior approvals and security

- 7.—(1) The specified works must not commence until—
- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;
 - (b) the programme of works has been approved by National Highways;
 - (c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a)
 - (ii) details of the proposed road space bookings;
 - (iii) the identity and suitability of the contractor and nominated persons;
 - (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;
 - (v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding; and
 - (d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
 - (e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(v) above;
 - (f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
 - (g) the undertaker has agreed the estimate of the commuted sum with National Highways;
 - (h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;
 - (i) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and
 - (j) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.

- (2) The undertaker must not exercise—
- (a) article 5 (*power to maintain authorised development*);
 - (b) article 8 (*street works*);
 - (c) article 10 (*power to alter layout etc. of streets*)
 - (d) article 13 (*stopping up of public rights of way*);
 - (e) article 12 (*temporary prohibition or restriction of the use of streets and public rights of way*);
 - (f) Article 14 (*access to works*)
 - (g) article 16 (*traffic regulation measures*);
 - (h) article 17 (*discharge of water*);
 - (i) article 18 (*authority to survey and investigate the land*);
 - (j) article 19 (*compulsory acquisition of land*);
 - (k) article 22 (*compulsory acquisition of rights*);
 - (l) article 23 (*private rights*)
 - (m) article 25 (*acquisition of subsoil only*);
 - (n) Article 28 (*rights under or over streets*)
 - (o) article 29 (*temporary use of land for constructing the authorised development*);
 - (p) article 30 (*temporary use of land for maintaining the authorised development*); or
 - (q) article 39 (*felling or lopping of trees and removal of hedgerows*) of this Order,

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

(3) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1) or (2).

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

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

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

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

Construction of the specified works

8.—(1) The undertaker must give National Highways 3 months' notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out the specified works and no specified works for which a road space

booking is required shall commence without a road space booking having first been secured from National Highways.

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

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 7(1) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken. For the avoidance of any doubt, National Highways is not the client and does not therefore presume any client responsibilities under 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 the Specified Works.

(5) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works 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 reasonable 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 (5) or sub-paragraph (6) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure reasonably incurred by National Highways in so doing, such sum to be payable within 30 days of demand.

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

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

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

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

Payments

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

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

together comprising “the NH costs”.

(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

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

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

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

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

- (a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it;
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

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

Provisional Certificate

10.—(1) Following the completion of any specified works or prior to the re-opening of any part of the strategic road network following any closure or partial closure, whichever shall be sooner, National Highways will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways prior to reopening the strategic road network.

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

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

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

(4) When—

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

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

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

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

National Highways must issue the provisional certificate.

(5) Following the issue of the provisional certificate the bond sum and cash surety shall be reduced 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 and/ or cash surety (which here shall also include any claim or claims to which National Highways are joined howsoever they arise) before that date National Highways will be at liberty to retain a sufficient sum in addition to the 20% to ensure it does not have to meet any costs for and/ or arising from and/or in connection with the specified works.

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

Opening

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

Final condition survey

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

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

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

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

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

Defects Period

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

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

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

Final Certificate

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

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

- (a) inspect the strategic road network; and
 - (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.
- (3) The undertaker must carry out such works notified to it pursuant to sub-paragraph 14(2).
- (4) When National Highways is satisfied that:
- (a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph 14(2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the reasonable satisfaction of National Highways; and
 - (b) the NH costs have been paid to National Highways in full;

National Highways must issue the final certificate after which the bond sum and cash surety shall be released 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 and/or cash surety (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 reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to these provisions.

Security

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

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

Commuted sums

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

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

Insurance

17. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £50,000,000.00 (fifty million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

Indemnity

18.—(1) The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 30 working days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Maintenance of the specified works

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

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

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

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

Land

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

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

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

(a) acquire or use land forming part of;

(b) acquire new or existing rights over; or

(c) seek to impose or extinguish any restrictive covenants over;

any of the strategic road network, or extinguish any existing rights of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalserviceteam@nationalhighways.co.uk.

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

Expert Determination

21.—(1) Article 43 (*arbitration*) of the Order applies to this Part of this Schedule.