

**Planning Act 2008**

**The Infrastructure Planning (Examination Procedure) Rules 2010**

**Application by Elements Green Trent Limited for an Order granting Development Consent for the Great North Road Solar and Biodiversity Park**

**Planning Inspectorate Reference Number: EN010162**

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**Deadline 1: Written Representation and Summary submitted on behalf of National Highways Limited**

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## 1. INTRODUCTION

1.1. This written representation is made on behalf of National Highways (“**NH**”) in respect of an application by Elements Green Trent Limited (“**Applicant**”) for an order granting development consent for the Great North Road Solar and Biodiversity Park Project (“**DCO**”). The Applicant seeks development consent for proposed authorised development described in Schedule 1 of the draft DCO (“**dDCO**”) (“**Authorised Development**”).

## 2. SUMMARY OF NH'S WRITTEN REPRESENTATION AND STEPS REQUIRED TO ENABLE NH TO REMOVE ITS OBJECTION

2.1. NH (being the statutory successor to the Highways Agency) is an arms-length government owned company responsible for the ownership, management and improvement of England's motorways and major A-roads, collectively referred to as the strategic road network (“**SRN**”).

2.2. NH is appointed pursuant to section 1 of the Infrastructure Act 2015 to act as the highway authority, traffic authority and street authority for the SRN. The effect of this appointment is to make NH the statutory custodian of this national asset, conferring on it the status and legislative functions of a strategic highways company. As a strategic highways company, NH must comply with a number of general and specific statutory duties.<sup>1</sup>

2.3. NH has no desire to stymy development or to impose requirements on the Applicant which are disproportionate to the potential harm that could be caused to the SRN. NH is legally obliged to co-operate with third parties exercising planning or highways functions, which includes the Applicant in the statutory process.<sup>2</sup> NH is prepared to engage fully and assist in whatever way is reasonable to ensure that the Authorised Development proceeds as quickly and efficiently as possible.

2.4. NH maintains its objection to the DCO and the Authorised Development for the reasons set out below:

(a) There are a number of Requirements included in Schedule 2 of the dDCO which NH has an interest and would expect approval rights over in respect of matters which are relevant to the SRN, given the current status of assessment information relating to construction and decommissioning traffic on the SRN and mitigation relevant to glint and glare affecting the SRN. These requirements are as follows:

- a. Requirement 5(1) and (2) Approval details and amendments to them;
- b. Requirement 14(1) Construction Traffic Management Plan;
- c. Requirement 19(1) Decommissioning and Restoration Plan;
- d. Requirement 22(1) Glint and Glare.

(a) NH has requested information from the Applicant to enable it to understand the impact on the SRN, including (i) trip generation hourly peak traffic flow figures; (ii) trip distribution flow diagrams for construction traffic; (iii) further information on the geographical area selected to calculate the growth factors and separate growth factors for the AM and PM peak hours; (iv) assessment of growth factors using the most recent version of the TEMPro software and clarification of all inputs into TEMPro for NH's review; (v) swept path analysis of the A1 for abnormal indivisible loads and the provision of drawings for NH's review; (vi) proposed routing and details of height and weight constraints and dimensions and total number of abnormal indivisible load movements; (vii) details of signage on the SRN to be approved by NH, details of which to be in accordance with the DRMB; and (viii) further information on the level of surface water discharge required to the A1 culvert. Without this data, NH is unable to assess the impact on its operational assets and traffic

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<sup>1</sup> Infrastructure Act 2015,s.5

<sup>2</sup> Infrastructure Act 2015, s.5(1)

capacity on the network, including for example whether a junction capacity assessment is required.

- (b) The impact of the Authorised Development on NH's development as authorised by the A46 Newark Bypass Development Consent Order 2025 is not yet known and further work is necessary to understand whether a construction interface agreement is required with the Applicant.
- (c) The protective provisions currently included in the dDCO are not agreed by NH. Inclusion of NH's protective provisions in a form acceptable to NH (as set out in Appendix 1) are required to ensure the necessary information is provided at the relevant stages and that NH's consent is obtained wherever access or works are to take place over any part of the SRN (including works above or below it) or land in which NH has an interest.

### **3. NATIONAL HIGHWAYS AND PROTECTION OF THE SRN**

- 3.1. As set out at paragraph 2 above, NH is an arms-length government owned company responsible for the ownership, management and improvement of the SRN. The SRN comprises over 4,500 miles of road sitting at the core of the national transport system, connecting all major economic and resource centres with key markets and conurbations. The SRN is the most heavily used part of the national road network, carrying a third of all traffic and two-thirds of all freight, totalling approximately 4 million journeys a day. It provides businesses with the means to get products and services to their customers, gives access to labour markets and suppliers, and encourages trade and new investment. It is also a complex network of highway structures, drainage and attenuation apparatus and telemetry and electronic communication assets. In short, the SRN is a critical piece of economic infrastructure, vital to the nation's connectivity and the means for generating economic growth.
- 3.2. NH is appointed pursuant to section 1 of the Infrastructure Act 2015 to act as the highway authority, traffic authority and street authority for the SRN. The effect of this appointment is to make NH the statutory custodian of this national asset, conferring on it the status and legislative functions of a strategic highways company.
- 3.3. As a strategic highways company, NH must comply with a number of general and specific statutory duties, including to:
  - (a) Co-operate in so far as reasonably practicable with other persons exercising functions which relate to highways or planning;
  - (b) Have regard to the effect of the exercise of its functions on the environment;
  - (c) Have regard to the effect of the exercise of its functions on the safety of users of highways.
- 3.4. The Secretary of State for Transport may from time to time give a strategic highways company directions or guidance as to the manner in which it is to exercise its statutory duties and functions. For the purposes of directing the functions as regards the SRN, these directions are contained within the 2015 Licence.<sup>3</sup> The directions contained in the 2015 Licence are mandatory<sup>4</sup> and are regulated by the Office of Road and Rail. They include:
  - (a) *Paragraph 4.1 - The network for which the Licence holder is responsible is a critical national asset, which the Licence holder must operate and manage in the public interest, in respect of both current activities and needs and in providing effective stewardship of its long-term operation and integrity;*

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<sup>3</sup> [Highways England: licence](#)

<sup>4</sup> Infrastructure Act 2015, s.6(3)

- (b) *Paragraph 4.2 - Without prejudice to the general duties on the Licence holder under section 5 of the Infrastructure Act 2015, the Licence holder must, in exercising its functions and complying with its legal duties and other obligations, act in a manner which it considers best calculated to:*
- i. *ensure the effective operation of the network;*
  - ii. *ensure the maintenance, resilience, renewal and replacement of the network;*
  - iii. *ensure the improvement, enhancement and long-term development of the network;*
  - iv. *ensure efficiency and value for money;*
  - v. *protect and improve the safety of the network;*
  - vi. *co-operate with other persons or organisations for the purposes of co-ordinating day-to-day operates and long term planning;*
  - vii. *minimise the environmental impacts of operating, maintaining and improving its network and seek to protect and enhance the quality of the surrounding environment;*
  - viii. *conform to the principles of sustainable development;*
- (c) *Paragraph 5.37 – The Licence holder must hold and manage land and property in line with, and as a function of, the Licence holder’s legal duties as highway authority, and solely for the purposes of operating, managing and improving the highway, unless otherwise approved by the Secretary of State for Transport.*

3.5. More particularly sections 41 and 130 of the Highways Act 1980 contain respectively a statutory duty for NH to ensure it maintains the SRN to the appropriate/sufficient standard, free from any hazards so it is safe to use, and a statutory duty to assert and protect the rights of the public in use and enjoyment of the SRN. Section 16 of the Traffic Management Act 2004 contains a statutory Network Management Duty for NH to manage the SRN with a view to achieving, so far as may be reasonably practicable having regard to NH’s other obligations, policies and objectives, securing the expeditious movement of traffic on the SRN and facilitating the same on roads where another authority is the traffic authority. In order to achieve this, the action NH may take in performing that duty includes that which NH considers will contribute to securing the more efficient use of the SRN or avoidance, elimination or reduction of disruption to the above relevant roads and may involve the exercise of any power to regulate or co-ordinate the uses made of any road (or part of a road) in the road network (whether or not the power was conferred on them in their capacity as a traffic authority). Section 17 of the Traffic Management Act 2004 requires that NH shall make such arrangements as they consider appropriate for planning and carrying out the action to be taken in performing its Network Management Duty and has to establish processes to, as far as reasonably practicable, identify things (including future occurrences) which are causing, or have potential to cause SRN congestion or other disruption to the movement of traffic on it and consider any possible action that could be taken in response to (or anticipation of) anything so identified, e.g. in the event NH considers this particular statutory duty may not be met.

3.6. Supplementary to this, 4.2 of NH’s statutory licence requires NH to act in a manner which it considers best calculated to ensure the effective operation of the SRN. To comply with this, Paragraph 5.1 states that NH should seek to minimise disruption to road users that might reasonably be expected to occur as a result of planned or unplanned disruption to the network, as well as proactively and reactively provide relevant, accurate and timely information about traffic and conditions on the SRN to road users, including when there is disruption. This range of duties demonstrates that NH must always protect road users/the SRN and ensure the SRN retains its integrity, is free from hazard/safe to use and is available for continual uncongested use all year round subject to precise terms of its Network Management Duty which means NH is duty bound to consider carefully any activity that has the potential to impact on any of NH’s statutory duties.

- 3.7. Under section 5(2)(b) of the Infrastructure Act 2015, NH is under a duty to have regard to the safety of highway users. Safety is at the heart of NH's function as a statutory undertaker – the safety of the travelling public, the safety of NH staff and the safety of third party contractors on the network. The SRN is inherently a dangerous network to operate on, over and under – given the very limited control that NH has on road users operating at high speeds. The potential for catastrophic damage or injury from collision is prevalent – which is precisely why NH has strict procedures for contractors operating on, over or under the SRN, particularly those which it does not itself control.
- 3.8. Unlike other statutory consultees involved in the consenting of nationally significant infrastructure projects, NH is a very active promoter of development consent orders and understands keenly the pressures and requirements placed on applicants to balance the delivery of the scheme with the protections afforded to statutory consultees. NH has been at the vanguard of DCO-consented development since the Planning Act 2008 was introduced and has offered many commitments for the protection of electricity and gas apparatus, water and drainage infrastructure, railway undertakings and other infrastructure owned by statutory consultees as a consequence of its own development consent orders. The SRN deserves the same measure of protection, proportionate to the extent of interference caused by the Authorised Development.
- 3.9. NH understands the need for proportionality in the context of such protections and considers that a proportionate level of protection in all cases and as a minimum standard where there is the potential for impact to the SRN should be the following:
- (a) That NH be held harmless from the impact of third party development;
  - (b) That NH procedures put in place for the protection of property and persons are adhered to in accordance with NH's strict requirements on network occupancy;
  - (c) That any works carried out to the highway, on NH land, underneath the highway or above the highway and to apparatus forming part of the highway estate should be certified by NH and approved by NH on completion of the works;
  - (d) That financial provision should be put in place to ensure that in the event of the Applicant commencing works which may impact the SRN (including for example, underground works beneath the SRN or oversailing above it) and falling into financial difficulty or defaulting on completion of the works, NH has the resources needed to put the SRN and the highway estate into the position it was in before the Applicant commenced works;
  - (e) That NH be indemnified for any loss or damage to the SRN or the highway estate as a result of the works;
  - (f) That the Applicant requests approval from NH before exercising any powers under the DCO in relation to the SRN or the highway estate (including for example, underground works beneath the SRN or oversailing above it) (such approval not to be unreasonably withheld) to enable proportionate rights and reservations to be secured for the protection of the SRN through private treaty;
  - (g) That emergency procedures be agreed for NH to access the SRN to carry out works or remove dangerous obstacles resulting from the Authorised Development which pose a risk to life.

3.10. These provisions are included in the NH protective provisions.

3.11. NH considers that without the NH protective provisions, there is a considerable risk of serious detriment to the SRN, as any damage or injury to the SRN or wider highway estate would require funding to rectify that is not within NH's budget. There is no recourse to public funding for emergency works of this nature and a reserve of funding is not available. Without prejudice to whether the Authorised Development would cause a serious detriment to the SRN, it remains the case that the

public purse should not be left to meet or subsidise costs of impacts caused by third party development to the SRN.

3.12. For the sake of clarity and transparency, NH has no desire to stymy development or to impose requirements on the Applicant which are disproportionate to the potential harm that could be caused to the SRN. NH is legally obliged to co-operate with third parties exercising planning or highway functions, which includes the Applicant in this statutory process.<sup>5</sup> NH is prepared to engage fully and assist in whatever way is reasonable to ensure that the Authorised Development proceeds as quickly and efficiently as possible.

#### 4. DRAFT DCO

4.1. Whilst the protective provisions included in the Applicant's dDCO for NH's benefit include some protections for NH, concerns do remain in relation to the form of those protective provisions. NH's requirements as to the form of its protective provisions is addressed in paragraph 6 below.

4.2. The Applicant has also included a number of Requirements in Schedule 2 of the dDCO which relate to management plans and mitigations that have direct impacts on the safe functioning of the SRN. NH request that these Requirements are amended as set out in the table below, for the reasons given in the "NH comments" column.

Article/Schedule	Summary of the Applicant's drafting with NH amendments in red	NH comments
Article 2(1)	N/A	To assist with interpretation of the various amendments suggested, we request that the following definition is added to the dDCO at Article 2(1) between the definitions of "maintain" and "NGET"  "National Highways" means National Highways Limited (Company No. 09346363) of Three Snowhill, Snow Hill Queensway, Birmingham, England, B4 6GA"
Schedule 2, Requirement 5(1) and (2) Approval details and amendments to them	5.—(1) With respect to the documents certified under article 41 (certification of plans and documents, etc.) and any plans, details or schemes which have been approved pursuant to any requirement (together the "approved documents, plans, details or schemes"), the undertaker may submit to the county authority or the planning authority (as applicable) <b>or National Highways (in relation to matters which relate to the safety of the strategic road network)</b> for approval of any amendments to any of the approved documents, plans, details or schemes and, following approval by the county authority or the planning authority <b>or National Highways</b> (as applicable), and the relevant approved documents, plans, details or schemes is to be taken to include the	These changes are necessary due to the fact that various approved documents, plans, details and schemes relate to matters which have a direct bearing on the operational safety of the SRN (for example, the glint and glare assessment or the CTMP). NH is seeking approval rights in relation to the relevant control documents which relate to matters affecting the safety of the SRN, however this provision is separate and distinct from those Requirements and relates to approval of changes to the relevant control documents.

<sup>5</sup> Infrastructure Act 2015, s.5(1)

	<p>amendments as so approved pursuant to this paragraph.</p> <p>(2) Approval under sub-paragraph (1) for the amendments to any of the approved documents, plans, details or schemes must not be given except where it has been demonstrated to the satisfaction of the county authority or the planning authority <b>or National Highways</b> (as applicable) that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.</p>	
Schedule 2, Requirement 14(1) Construction Traffic Management Plan	<p>14.—(1) No phase of the authorised development may commence until a construction traffic management plan for that phase has been submitted to and approved by the county authority <b>and, in respect of effects on the strategic road network, National Highways</b>.</p> <p>(2) The construction traffic management plan submitted under sub-paragraph (1) must be substantially in accordance with the outline construction traffic management plan.</p> <p>(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction traffic management plan</p>	<p>The Applicant has not included the strategic road network within the scope of its environmental assessment, meaning that the precise nature of the construction traffic impacts on junction capacity, trip generation and distribution are not known. NH has requested this information in our relevant representation which is yet to be provided by the Applicant. In order to get NH comfortable on the potential impacts on the SRN, NH requests approval rights over the CTMP specifically in relation to matters relating to the SRN only – which is entirely proportionate and does not result in NH having more control than is necessary over the CTMP. This approach was adopted by the Secretary of State on the recent Viking CCS Carbon Dioxide Pipeline Order 2025.</p>
Schedule 2, Requirement 19(1) Decommissioning and Restoration Plan	<p>19.—(1) Not less than 6 months before the 40th anniversary of the earlier of the date— 44 (a) on which the final phase of the authorised development; or (b) 3 years following the date on which the first phase of the authorised development first exports electricity on a commercial basis (as notified to the planning authority pursuant to requirement 3(2)), a decommissioning and restoration plan must be submitted to the planning authority, <b>and in respect of effects on the strategic road network, National Highways</b>, for its approval, in consultation with the county authority.</p> <p>(2) The decommissioning and restoration plan must be in substantial accordance with the outline decommissioning and restoration plan.</p>	<p>NH acknowledges the concession from the Applicant at paragraph 2.4.1 of the Statement of Common Ground between the Applicant and NH that it intended to provide NH with a consultation right over the Decommissioning and Restoration Plan in Requirement 19(1), however given the fact that construction or traffic impacts on the SRN are not known, NH requests an approval right over the DRP in respect of matters relating solely to the SRN. The principle of and justification for this approach is the same as that for the CTMP in Requirement 14(1) above.</p>

	<p>(3) The decommissioning and restoration plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.</p> <p>(4) Within 28 days of permanently ceasing operations in any phase the undertaker must notify the planning authority in writing of the date it permanently ceased operations for that phase.</p> <p>(5) This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development</p>	
Schedule 2, Requirement 22(1) Glint and Glare	<p>22.—(1) No phase of the authorised development may commence until a glint and glare assessment containing details of how the design of the authorised development has incorporated mitigation to ensure the glint and glare levels are below the assessment criteria as set out in the glint and glare assessment contained in the environmental statement for that phase has been submitted to and approved by the planning authority <b>and, in respect of effects on the strategic road network, National Highways.</b></p> <p>(2) The design as described in the glint and glare assessment submitted in accordance with sub-paragraph (1) must be implemented as approved.</p>	As set out in NH's relevant representation. NH understands that ES Volume 4, Appendix 16.1 Lint and Glare Assessment [EN010162/APP/6.4.16.1] demonstrates above tolerance impacts to parts of the SRN, requiring mitigation to be agreed. This mitigation is secured by Requirement 22(1). NH requests an approval right over the mitigation to be provided as part of a glint and glare assessment in respect of impacts to the SRN only – given the potential for safety impacts.

## 5. ADDITIONAL INTERFACES

- 5.1. As noted in the NH relevant representation, NH has requested information on various matters to enable it to form a conclusion on the impact on the SRN particularly with regard to junction capacity. This includes:
- (b) Trip generation hourly peak traffic flow figures;
  - (c) Trip distribution flow diagrams for construction traffic;
  - (d) Further information on the geographical area selected to calculate the growth factors and separate growth factors for the AM and PM peak hours;
  - (e) Assessment of growth factors using the most recent version of the TEMPro software and clarification of all inputs into TEMPro for NH's review;
  - (f) Swept path analysis of the A1 for abnormal indivisible loads and the provision of drawings for NH's review;

- (g) Proposed routing and details of height and weight constraints and dimensions and total number of abnormal indivisible load movements;
  - (h) Details of signage on the SRN to be approved by NH, details of which to be in accordance with the DRMB; and
  - (i) Further information on the level of surface water discharge required to the A1 culvert.
- 5.2. Much of this information is required in order to establish whether a junction capacity assessment is required, the result of which would inform the outcome of whether mitigation is required. As a result, NH reserves its position on capacity related mitigation measures until such information is provided by the Applicant.
- 5.3. NH also notes that the Authorised Development may interface with NH's major capital project, the A46 Newark Bypass DCO project, which was granted development consent by the Secretary of State for Transport on 1 October 2025. It is necessary for the protection of this project that the Applicant agrees to co-operate with NH in the delivery of the Authorised Development, in a way that safeguards the significant public investment that has been made by NH. Following the conclusion of the Government's Spending Review, funding for the A46 Newark Bypass scheme has now been confirmed. The Government and NH remain committed to maintaining a safe and reliable road network, necessary to stimulate economic growth and enhance opportunities across the country. In the coming months, NH will be working closely with Department for Transport to identify delivery timetables for this project. We will update the Applicant on delivery timings, as part of the next Road Investment Strategy which is scheduled to be published in March 2026.
- 5.4. NH is currently considering the potential interfaces between the Authorised Development and the A46 Project, which may necessitate a requirement for construction interface agreements between NH and the Applicant. NH reserves its position on construction interface until further details are known.

## 6. PROTECTIVE PROVISIONS

- 6.1. The protective provisions currently in the dDCO [EN010162/APP/3.1] [\[APP-007\]](#) at Part 5 Schedule 13 are not agreed by NH. NH's template form was provided to the Applicant in July 2025. The amendments received from the Applicant were substantial, due to the fact that the Applicant is not seeking compulsory powers of acquisition or temporary possession over the SRN and, in the Applicant's view, is not carrying out works to the SRN.
- 6.2. NH's view is that Work No. 8 in Schedule 1 of the dDCO (specifically shown on Works Plan sheets 26 and 28) [\[APP-\[ \]\]](#) show works to two crossings which oversail the A1 in two different locations. Like any other statutory undertaker, NH would wish to control the operation of construction activity that undergounds or oversails its assets. To not do so would place the public and NH operational staff at significant safety risk. Where work takes place in, on, under or over the SRN, the Applicant is required to seek the necessary approval of the works from NH and where necessary, carry out road safety audits and seek road space bookings. Detailed design information is required in respect of road signage, which must be carried out in accordance with established standards in the Design Manual for Roads and Bridges. Where works are taking place over NH's network, it is right and proper than a full indemnity is provided to NH in respect of all potential damage or loss that NH could suffer as a result of the works or the negligence of the Applicant's contractors or agents. National Highways must be held harmless from the impact of third-party development.
- 6.3. Whilst it is recognised that the Applicant is not intending the carry out works to the carriageway or to NH assets, the works which the Applicant intends to carry out oversail the NH estate and it is critical that the risks of such works are managed in accordance with NH's own procedures.
- 6.4. An updated draft of the protective provisions has been received by the Applicant and NH will continue to discuss the protective provisions with the Applicant in an effort to reach agreement. An updated

draft of the protective provisions which NH is prepared to accept and which reflects the last draft of the protective provisions sent to the Applicant is included at Appendix 1 to this Written Representation.

6.5. A full justification for each of the key provisions and definitions of NH's protective provisions is set out below:

Paragraph	Heading	Justification
43	Interpretation	<p>"bond sum" – this provides that a bond sum of 200% of the cost of the specified works is required. The bond required is not the total cost of the works but rather the section of works specifically impacting the SRN or land in which NH has an interest. Much in the same way as a section 278 agreement, bonding is required to protect NH from financial liability in the event that the Applicant defaulted on the specified works.</p> <p>"commuted sum" – provision of financial security to NH for any assets which require ongoing maintenance. Where the Authorised Development includes works which will require ongoing maintenance, this should be funded by the Applicant.</p> <p>"detailed design information" – contains the relevant information required by NH in order to approve the commencement of the specified works. In the experience of NH's highway engineers, this definition includes all necessary drawings, specifications, calculations etc. required for signing off works in, on, under or over the SRN.</p> <p>"final certificate" and "provisional certificate" – as it is NH understanding that works will be undertaken above the SRN, certification of those works is required.</p> <p>"strategic road network" - includes all operational land of NH within the Order limits and also the highway estate itself to protect the safe functioning of the SRN. This is purposely drafted to include works below and above the SRN, which obviously pose a safety risk to the operational network.</p>
44	General	As the A1 may be a DBFO road, any DBFO contractor must have the benefit of the protective provisions. This does not impact the Applicant but ensures whoever is responsible for the relevant part of the SRN has the benefit of the provisions.
45	Works outside the Order limits	The Applicant must enter into an agreement with NH prior to the commencement of any works to the SRN that are outside of the Order limits. This is to ensure that NH is aware of any relevant works affecting the SRN, including their scope and potential impact, to ensure that the works are managed safely and appropriately.
46	Prior Approvals	To ensure that the specification of the specified works all associated processes including traffic management, financial provision for ongoing maintenance liabilities, scope of maintenance, condition surveys and road safety audits are addressed prior to commencement of works affecting the

		<p>SRN. All of this information is required whether the relevant works comprise of works to the highway or not.</p> <p>NH also requires collateral warranties from any contractor and designer of the specified works, to ensure appropriate contractual liabilities are recoverable.</p> <p>No exercise of any article set out in 46(5) should take place without the express consent of NH, to ensure that NH is aware of the progress of the relevant works affecting the SRN, the scope of those operations, the potential impact to road users and to ensure that compulsory acquisition is managed appropriately and proportionately.</p>
48	Payments	<p>The reasonable costs incurred by NH in relation to the specified works and any approvals sought under the Order, for example the supervision of works, the transfer of land, legal and administrative costs and VAT should be payable by the Applicant. But for the Applicant's scheme, NH would not have to expend resources on the specified works.</p>
49	Provisional Certificate	<p>This provision ensures that before reopening any part of the SRN which has been altered as a result of specified works, NH is able to verify that the road network is safe and any such works are compliant with NH requirements through inspections and safety audits. It is critical to the safe and efficient operation of the SRN that works are signed off by NH engineers as safe, where there is an interface with the SRN.</p> <p>This provision is also required for the purposes of the Applicant as it has the effect of reducing the bond sum to 20% on the issue of the provisional certificate.</p>
52	Defects Period	<p>On the issue of the provisional certificate, the Applicant will be required to remedy any defect in the works carried out to, beneath or above the SRN for a period of 12 months. Where NH's network is damaged by works carried out pursuant to the DCO, it is for the Applicant to remedy that damage.</p>
53	Final Certificate	<p>This provision is required in order to release the bond in full, to ensure that the NH costs are paid by the Applicant and to ensure that NH is given a final opportunity to inspect the works to, above or below the SRN and be satisfied that the specified works have not resulted in damage to the SRN.</p>
54	Security	<p>This provision is required by NH to ensure financial and operational protection if the Applicant breaches obligations or fails to complete works under the Order which could impact the SRN, using a bond and cash surety to cover potential losses, remedial costs, and maintain safety on the SRN. This is commonly required by statutory undertakers to reduce risk to public infrastructure and taxpayers.</p>

55	Commuted sums	A commuted sum may be required to contribute to the maintenance of any apparatus installed on the highway as part of the Authorised Development.
56	Insurance	Insurance is required due to the potential for damage to infrastructure, highway assets and road users as a result of the execution of the specified works or use of the SRN.
57	Indemnity	NH must be held harmless for the construction, maintenance or use of the specified works, the exercise or failure to exercise any power under the Order or any resultant impacts. It is common practice for statutory undertakers and in particular, National Highways, to be indemnified in such circumstances.
58	Maintenance of the specified works	To ensure that where maintenance to the specified works is required, the relevant road space booking procedures and NH requirements are complied with to ensure the safety of contractors and road users.
59	Land	To ensure that matters relating to land and rights are directed to the legal team at NH and to ensure that powers are not exercised which would circumvent NH's ability to impose restrictions and controls on the use of the land in a way which would impact on the SRN or be detrimental to safety.
60	Expert Determination	Expert determination is the preferred means of dispute resolution due to the speed of the process and the often technical nature of the points in dispute being more suited to determination by a technical expert as opposed to an arbitrator.

**APPENDIX 1**  
**NH PROTECTIVE PROVISIONS**

## PART 5

### FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

#### **Application etc.,**

**42.**—(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 Highways Act 1980, the Road Traffic Regulation Act 1984, the New Roads and Street Works Act 1991, 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**

**43.**—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2) below the latter prevail.

(2) In this Part of this Schedule—

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

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

- (a) as constructed drawings in both PDF and Auto CAD DWG formats for anything designed by the undertaker; in compliance with GG184 (Specification for the use of Computer Aided Design) 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 to include the geotechnical feedback report required under CD622; and
- (l) other such 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 or any successor of it including CCTV surveys,

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

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

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

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

“commuted sum” means such sum calculated as provided for in paragraph 55 of this Part of this Schedule to be used to fund the future cost of maintaining any new National Highways assets, structures or apparatus provided under the Order;

“condition survey” means a survey of the condition of National Highways structures and assets that in the reasonable opinion of National Highways may be affected by the specific 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 sub-contractor appointed by the undertaker to carry out a specified work;

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

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

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;
- (e) earthworks including supporting geotechnical assessments required by CD622 Managing geotechnical risk of the DMRB or any successor document 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 (asbestos management) or any successor document; and
- (v) other such information that may be reasonably required by National Highways to inform the detailed design of a specified work;

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

“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;

“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 53;

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

“highways structure” means structures or installations within the scope of the DMRB and that are situated under, over or adjacent to a motorway or other trunk road;

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

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

“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 49 when it considers the specified works are substantially complete and may be opened for traffic;

“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;

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

“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 a highway for which National Highways is the highway authority.

## General

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

(2) Notwithstanding the limits of deviation permitted pursuant to article 3(2) (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 in under or over the strategic road network unless such works are agreed in writing with National Highways at the absolute discretion of National Highways.

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

## **Works outside the Order limits**

**45.**—If the undertaker proposes to carry out works to the strategic road network that are outside of the Order limits in connection with the authorized 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**

**46.**—(1) No specified work may 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; the programme of works has been approved by National Highways;

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

(i) the detailed design information, 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) (if details have been supplied pursuant to sub-paragraph (ii) above) a scheme of traffic management;

(iv) the identity and qualifications of the contractor and nominated persons;

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

(vi) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding or any successor document;

(c) 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;

(d) any stakeholder liaison that may be required has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c) above;

(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 specified 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 work has been supplied to National Highways; and

(j) a condition survey and a regime of monitoring the structures, assets and pavements that are the subject of the condition survey, has been submitted to and approved by National Highways.

(2) National Highways must provide the undertaker with a list, which is to be agreed between the parties acting reasonably, of all the structures, assets and pavements to be subject to both a condition survey and regime of

monitoring pursuant to sub-paragraph (1)(j) and paragraph 51(1) of this Part of this Schedule before the first condition survey is conducted and the reasonable regime of monitoring is implemented.

(3) National Highways must prior to the commencement of a specified work inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways to consider the information required under sub-paragraph (1) and of the identity of the person or persons who are authorised to give consent or approval on behalf of National Highways for any matter requiring approval or consent in these provisions.

(4) Any approval of National Highways required by this paragraph 46—

- (a) must not be unreasonably withheld;
- (b) is deemed to have been refused if it is neither given or refused within 56 days of the submission of the relevant information (if further information is requested by National Highways any such request must be submitted to the undertaker within 28 days of submission of the relevant information under this sub-paragraph (b) and the provision of such further information by the undertaker will not be deemed to constitute a new application for approval pursuant to this paragraph 46); and
- (c) may be given subject to any conditions as National Highways considers necessary.

(5) The undertaker must not exercise—

- (a) article 5 (power to maintain the authorised development);
- (b) article 10 (street works);
- (c) article 11 (power to alter layout, etc. of streets);
- (d) article 13 (temporary prohibition, restriction and diversion of use of streets and public rights of way);
- (e) article 16 (access to works);
- (f) article 18 (traffic regulation measures);
- (g) article 19 (discharge of water);
- (h) article 20 (protective works to buildings);
- (i) article 21 (authority to survey and investigate the land);
- (j) article 22 (compulsory acquisition of land);
- (k) article 24 (compulsory acquisition of rights and imposition of restrictive covenants);
- (l) article 27 (acquisition of subsoil or airspace only);
- (m) article 30 (rights under or over streets);
- (n) article 31 (temporary use of land for constructing the authorised development);
- (o) article 32 (temporary use of land for maintaining the authorised development); or
- (p) 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 submit a scheme of traffic management for National Highways' approval.

(6) 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.

(7) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 46(1) of this Part.

## **Construction of the specified work**

47.—(1) The undertaker must, prior to commencement of a specified work, give to National Highways 3 months notice in writing of the date on which the specified work will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out of the specified work and no specified work for which a road space booking with National Highways is required will commence without a road space booking having first been secured from National Highways.

(3) Any specified work 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 46(1) of this Part of this Schedule or as subsequently varied by agreement between the undertaker and National Highways;

(b) the DMRB, the Specification for Highway Works (contained within the Manual of Contract Documents for Highways 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 and any amendment to or replacement thereof for the time being in force 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—

(a) the highway is kept free from mud, soil and litter as a result of the carrying out of a specified work; and

(b) the specified work is carried out without disturbance to the highway and so that the highway remains open for traffic at all times unless otherwise agreed with National Highways.

(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 a specified work for the purposes of inspection and supervision of a specified work or method of construction of such work.

(6) If any specified work 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, any 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 of the date on which a notice under sub-paragraph (6) or sub-paragraph (7) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure incurred by National Highways in so doing, such sum to be payable within 28 days of demand.

(9) National Highways may, at its discretion, in its notice in writing to the undertaker given pursuant to sub-paragraph (6) state that National Highways intend to put right the damage notified to the undertaker, and if it intends to do so it must give the undertaker not less than 28 days' notice of its intention to do so and National Highways may recover from the undertaker any reasonable expenditure incurred by National Highways in doing so.

(10) Nothing in this Part of this Schedule prevents National Highways from, in the event of an emergency or to prevent the occurrence of danger to the public, 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 authorized development without prior notice to the undertaker and National Highways may recover from the undertaker any reasonable expenditure incurred by National Highways in so doing.

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

(12) 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.

(13) 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**

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

- (a) the checking and approval of the information required under paragraph 7(1);
- (b) the supervision of the specified works;
- (c) contractual costs properly payable to the highway operations and maintenance contractor as a consequence of any specified works, including costs incurred by the highway operations and maintenance contractor in carrying out the tasks referred to in sub-paragraphs (a) and (b) of this paragraph, in which case National Highways will be responsible for the payment of any sums received from the undertaker under this paragraph to the highway operations and maintenance contractor;
- (d) the checking and approval of the information required to determine approvals under this Order;
- (e) all costs in relation to the transfer of any land required for the specified works;
- (f) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and
- (g) any value added tax which is payable by National Highways in respect of such costs and expenses arising under this paragraph and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

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

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

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

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 49(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**

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

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

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

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

(4) When—

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

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

- (c) the as built information has been provided to National Highways; and
- (d) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

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

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

### **Opening**

**50.**—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.

#### **Completion of a specified work**

**51.**—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 49(2), arrange for the highway structures, assets and pavements that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval.

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

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme and programme pursuant to paragraph 51(2) or fails to submit a scheme for remedial works to National Highways, National Highways may carry out the steps required of the undertaker and may recover on demand 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 51(1), give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover on demand any expenditure from the undertaker it reasonably incurs in so doing.

(5) Within 10 weeks of the completion of a specified work, the undertaker must submit to National Highways the as built information, both in hard copy and electronic form.

(6) The undertaker must make available to National Highways upon reasonable 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**

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

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

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

#### **Final Certificate**

**53.**—(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 53(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 53(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 the bond sum is 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 (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 53.

### **Security**

- 54** —(1) The specified works must not commence until—
- (2) the undertaker procures that the specified works are secured by a bond 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
  - (3) 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 48 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.

### **Commututed sums**

- 55.** —(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**

- 56.** 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 (50 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**

- 57.** The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from or in connection to the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order and any such costs shall be paid to National Highways within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

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

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

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

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

(4) The provisions of paragraph 50 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

## Land

**59.**—(1) 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 part of the strategic road network or land owned by National Highways, or extinguish any existing rights of or interfere with apparatus of National Highways in respect of any third party property, except with the consent of National Highways by written request to [legalservicesinbox@nationalhighways.co.uk](mailto:legalservicesinbox@nationalhighways.co.uk)

(2) Where any land or interest is proposed to be acquired pursuant to this Order for the benefit of National Highways, the undertaker must, unless otherwise agreed by National Highways, exercise article 22 (*compulsory acquisition of land*) and article 24 (*compulsory acquisition of rights and imposition of restrictive covenants*) as applied by article 26 (*application of the 1981 Act*) of this Order to directly vest in National Highways any such land or interest.

## Expert Determination

**60.**—(1) Article 42 (*arbitration*) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

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

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42 (*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.