

Lime Down Solar Park

**Planning Inspectorate Reference:
EN010168**

**Wiltshire Council Response to ExA's
Second Written Questions (ExQ2)**

Deadline 6 (21 August 2026)

CONTENTS

Draft Development Consent Order (dDCO) DCO2.23, DCO2.24	X
Appendix A Wiltshire Council Preferred Protection Provision DCO2.24	X

Draft Development Consent Order (dDCO)

General Matters

Schedule 15 – Protected Provisions

DCO2.23	All Statutory Undertakers Wiltshire Council – [REDACTED]	Status and Proposed Revisions As per the examination timetable, all Statutory Undertakers and Wiltshire Council are requested to submit their proposed version of protective provisions that they wish to see included for their benefit in the dDCO but have not been agreed by the applicant. Please also set out why you are not content with the applicant’s version in Schedule 15 of Revision 4 of the dDCO [REP4-004], and explain why the ExA and Secretary of State should prefer your suggested drafting. WC Response: Wiltshire Council submits with this response the version of the local highway authority protective provisions which it considers should be included in Schedule 15 of the draft Development Consent Order for its benefit. The Council remains in active discussions with the Applicant. The Council returned a further marked-up version of the protective provisions on 10 August 2026. Those discussions are ongoing. However, the provisions have not yet been agreed, and the Council therefore submits its preferred drafting in accordance with the Examination timetable. 1. Why Wiltshire is not content with the Applicant’s version Wiltshire is not content with the Applicant’s version of Schedule 15 in Revision 4 of the draft DCO because it does not yet provide a sufficiently robust or complete regime for protecting the local road network, highway assets, road users, and Wiltshire’s statutory highway functions. The Council’s concern is not that the DCO must replicate an ordinary section 38 or section 278 agreement. Nor is the Council seeking to duplicate the street works, permit scheme or Construction Traffic Management Plan controls. The point is that a DCO confers project-specific statutory powers, including powers to carry out works to and under the local road network. Those powers require project-specific protective provisions which operate directly between the undertaker and the local highway authority. The Applicant’s version still leaves material gaps in the following areas. 2. Scope of the protective provisions The Applicant’s version narrows the application of the protective provisions to road works and cable works. Wiltshire’s position is that the protective provisions must also apply to the carrying out, maintenance and decommissioning of the authorised development insofar as those activities, including construction traffic associated with the authorised development, affect or may reasonably be expected to affect the local road network. This is necessary because highway impacts from the authorised development will not necessarily be confined to the footprint of road works or cable works. Construction traffic may cause physical damage, abnormal deterioration, obstruction, contamination, mud on the highway, or other impacts across the local road network. Requirement 15 and the permit scheme are not a substitute for this application wording. They may regulate traffic management, routing, permits and road-space coordination, but they do not provide the full protective machinery required by the local highway authority, including direct condition survey approval, monitoring, damage redress, step-in, cost recovery, security and indemnity provisions. Wiltshire’s wider application wording is therefore necessary to ensure that the protective provisions apply to the real highway risks generated by the authorised development. 3. Technical approval and deemed approval Wiltshire cannot accept deemed approval for pre-commencement highway technical approvals. The approvals required under the protective provisions concern highway safety, asset protection, road-space coordination, construction methodology, road safety audits, detailed design information, condition surveys, cable depths, geotechnical information, traffic management and compliance with highway specifications. These are not ordinary planning details. The Council accepts that the undertaker requires timely decisions. Wiltshire’s drafting addresses that by requiring approvals not to be unreasonably withheld, by requiring written reasons for refusal, and by providing a dispute resolution mechanism. That is the appropriate safeguard against delay. Deemed approval is not appropriate for safety-critical highway matters.
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If the Applicant requires a longstop mechanism, the appropriate compromise is deemed refusal, not deemed approval. That would preserve the undertaker's ability to challenge delay while avoiding the unacceptable outcome that detailed highway works or cable works could be treated as approved without technical review.

4. Condition surveys, monitoring and highway damage redress

Wiltshire requires the condition survey, monitoring and highway damage redress regime to be secured directly through the protective provisions.

A CTMP may identify construction routes and management measures, but it does not provide the same direct legal protection as the protective provisions. Wiltshire requires an agreed baseline condition survey and monitoring regime, together with a highway damage redress protocol where reasonably required, including recovery of excess maintenance expenses arising from extraordinary traffic associated with the authorised development, including where applicable under section 59 of the Highways Act 1980.

These controls are necessary to ensure that the local road network is not left to the public purse where damage or abnormal deterioration is attributable to the authorised development.

5. Maintenance until final certificate

Wiltshire does not accept the Applicant's proposed amendment which would end the undertaker's maintenance responsibility on application for the final certificate.

That approach is misconceived. An application for a final certificate is only the start of the final certification process. It does not establish that the works are acceptable, that all defects have been remedied, that final information has been provided, or that the local road network has been left in a condition suitable for the local highway authority to maintain.

The ordinary highways model is that the developer remains responsible until the highway authority is satisfied that the works, maintenance period, defects and final information have been properly completed. The relevant trigger is the issue of the final certificate, not the developer's application for it.

Wiltshire's drafting does not give the Council an unfettered ability to delay. The protective provisions require Wiltshire to inspect, identify any further works required, and issue the final certificate once the relevant matters have been resolved. If the Applicant considers Wiltshire is acting unreasonably, the dispute resolution mechanism is available.

6. Security, bond and commuted sums

Wiltshire requires appropriate security for the road works and cable works, including a bond or cash surety calculated by reference to 120% of the estimated cost of works plus the commuted sum.

The security mechanism is necessary because the local highway authority must not be exposed to the risk of having to complete, remedy or make safe works to the local road network at public expense if the undertaker defaults or becomes insolvent. The ability to calculate the security by phase is a proportionate way of addressing the Applicant's delivery concerns.

The commuted sum must also be calculated by reference to the local highway authority's current published or approved methodology at the date the estimate is prepared. It should not be fixed by reference to a potentially outdated methodology contained in the Outline Construction Traffic Management Plan.

7. Costs, mud control and practical highway management

Wiltshire's costs provisions are necessary to ensure that the Council can recover the reasonable costs it incurs in checking, approving, supervising, inspecting and administering the highway aspects of the authorised development.

The mud deposit is also justified. It is modest, refundable, and targeted at the practical risk of mud, soil, litter or other deleterious material being deposited on the local road network from multiple dispersed works locations and construction accesses. It does not duplicate the undertaker's primary obligation to keep the highway clean; it provides a practical mechanism for urgent or default cleaning where necessary in the interests of highway safety.

8. Indemnity

Wiltshire does not accept that its standard section 278 indemnity is the appropriate model for these DCO protective provisions.

A section 278 or section 38 agreement is principally concerned with the delivery, inspection, maintenance and adoption of agreed highway works. These protective provisions are wider. They are required to protect the local highway authority against the exercise of statutory powers under the DCO, including works to and under the local road network, cable works, maintenance, removal, reinstatement, decommissioning, interference with highway assets and land, and claims arising under statutory compensation codes.

The indemnity must therefore reflect the wider DCO risk profile. A National Highways-style indemnity is more appropriate because it is designed for protective provisions in an Order conferring statutory powers, rather than for a conventional developer highway agreement.

9. Land and rights affecting the local road network

		Wiltshire requires clear protection against the exercise of DCO powers over land forming part of the local road network or land owned by the local highway authority, except with the consent of the local highway authority. This is necessary to ensure that the undertaker cannot acquire, use, interfere with, extinguish rights over, or impose rights on highway land or local highway authority land without proper local highway authority control. That is a proportionate protection for land and assets held by Wiltshire in its statutory highway capacity. 10. Expert determination Wiltshire accepts expert determination as an appropriate mechanism for technical highway disputes. However, the clause must preserve the ability to refer disputes concerning legal interpretation to arbitration, and it must not prevent Wiltshire from exercising urgent highway safety or step-in powers where action is needed to protect the public or the local road network. The expert determination process must also avoid any open-ended gap between nomination of an expert and the start of the determination timetable. The expert process should be capable of operating quickly and effectively where highway delivery or safety issues arise. 11. Why the ExA and Secretary of State should prefer Wiltshire's drafting Wiltshire's drafting should be preferred because it is targeted, proportionate and directly related to the impacts of the authorised development on the local road network. The drafting does not give Wiltshire a veto over the authorised development. It requires the Council to act reasonably, to give written reasons for refusal, and to engage in expert determination where disputes arise. The protections are confined to matters relevant to Wiltshire's statutory highway functions, including highway safety, asset protection, network management, technical approval, security, cost recovery, maintenance, defects, indemnity and land interests. The Applicant's version relies too heavily on Requirement 15, the permit scheme and general street works controls. Those controls are important, but they do not provide a complete substitute for direct protective provisions in favour of the local highway authority. For these reasons, Wiltshire asks the ExA and Secretary of State to prefer Wiltshire's submitted version of the protective provisions, unless and to the extent that further agreement is reached with the Applicant before the close of the Examination.
DCO2.24	The Applicant Wiltshire Council – [REDACTED]	Protected Provisions for The Local Highway Authority The ExA acknowledges the submission of draft protected provisions for the local highway authority from the applicant [REP4-004] and Wiltshire Council [REP4-092]. From a review of the drafts, the ExA notes for example (but not least) that the definition of "the bond sum" and "the commuted sum" are different between the two versions, while the "estimated costs of works" definition provided by the Council has not been included in the applicant's version. The ExA also notes that in the applicant's definition of "the bond sum", sub-paragraph (c) refers to National Highways, when it should refer to the local highway authority. <u>The Applicant:</u> The applicant is required to identify for the ExA all variances between the two versions and advise what discussions are taking place to resolve these variances. The ExA appreciates that prior to deadline 5 the drafting of the protected provisions for the local highway authority may evolve, such that a revised version of the provisions may be submitted into the examination, but it would nonetheless be helpful to the ExA for the variances from the Council's version to be clearly identified, explained and justified. The applicant is also asked to explain whether any revisions are required to the drafting of Articles 8 to 16, or Requirement 15 (or the oCTMP) in light of these protected provisions. The ExA is seeking to be absolutely clear on whether Article 47, Schedule 16 or the protected provisions take priority in the consent/ approval arrangements contained within Articles 8 to 16 and Requirement 15. <u>Wiltshire Council:</u> Wiltshire Council is also invited to make submissions if required. WC Response: Wiltshire Council notes the ExA's comments regarding the differences between the Applicant's and the Council's versions of the local highway authority protective provisions. This issue is addressed in Wiltshire Council's latest version of the protective provisions. The Council's latest drafting includes:

- a definition of “**the bond sum**” calculated by reference to 120% of the estimated cost of works plus the commuted sum;
- a definition of “**estimated cost of works**”, so that the basis for calculating the bond is clear and objectively referable to the works affecting the local road network; and
- a definition of “**commuted sum**”, linked to the local highway authority’s applicable commuted sum methodology at the date the estimate is prepared, or such other methodology as may be agreed.

The Council agrees with the ExA’s observation that the reference to **National Highways** in the Applicant’s version should refer to the **local highway authority**. That error is not present in Wiltshire’s latest drafting.

Wiltshire’s position is that the Applicant’s Revision 4 drafting is deficient because it does not include the Council’s definition of “estimated cost of works”. Without that definition, the bond sum is not anchored to a clear and comprehensive calculation of the works and associated costs which the bond is intended to secure. This is particularly important because the works may come forward in phases and may include temporary works, traffic management, reinstatement works, remedial works, testing, supervision, road safety audit remedial measures and other works reasonably required to complete the road works and cable works to the satisfaction of the local highway authority.

The Council’s drafting should therefore be preferred because it provides a complete and coherent security mechanism. It identifies:

- what costs are secured;
- how the estimated cost of works is to be calculated;
- how the commuted sum is to be calculated;
- how the bond sum is to be derived; and
- that the relevant security is to be in favour of, and enforceable by, the local highway authority.

WC returned a further marked-up version of the protective provisions on 10 August 2026 and negotiations remain ongoing. However, unless and until an agreed form is reached, Wiltshire asks the ExA and Secretary of State to prefer the Council’s latest drafting on these points.

PART 1

FOR THE PROTECTION OF THE LOCAL HIGHWAY AUTHORITY

Application etc.,

- 1.—
- (1) The provisions of this Part of this Schedule have effect in relation to
- (d) the road works and cable works (as defined under paragraph 2);
- (d) the carrying out, maintenance and decommissioning of the authorised development insofar as construction traffic associated with those activities causes, or may reasonably be expected to cause, physical damage to, abnormal deterioration of, or obstruction or contamination of, the local road network
- unless otherwise agreed in writing between the undertaker and Wiltshire Council or South Gloucestershire Council in their respective capacity as the local highway authority.

Interpretation

2. —
- (1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2) the latter prevail.
- (7) In this Part of this Schedule—
- “as built information” means one electronic copy of the following information where the local highway authority deems it to be necessary and insofar as it is relevant to the works impacting the local road network or any land in which the local highway authority holds an interest, or which is intended to be transferred to the local highway authority, dedicated as highway, adopted, or otherwise form part of or be maintained by the local highway authority as part of the local road network—
- (d) drawings showing the as constructed local highways in an appropriate format (including digital storage media);
- (d) drawings showing the location for utilities installed in the local highway;
- (d) specifications for materials used for the constructed local highway;
- (d) an as-built topographical survey of the completed road works and cable works, including relevant tie-ins and highway asset information; and,
- (d) all other as-built drawings and plans required under this definition must be prepared by reference to, and be consistent with, the as-built topographical survey referred to in paragraph (d), unless otherwise agreed with the local highway authority.
- “bond” means a bond or guarantee in favour of and enforceable by the local highway authority, in a form approved by the local highway authority duly executed by the undertaker and a reputable UK surety company or other UK financial institution to be previously approved in writing by the local highway authority (such approval not to be unreasonably withheld or delayed);
- “the bond sum” means the sum equal to 120% of the estimated cost of carrying out the road works and the cable works or relevant phase plus the commuted sum, or such other sum as may be agreed in writing between the undertaker and the local highway authority, to be provided to the local highway authority in the form of—
- (c) a bond; or
- (c) a cash surety; or
- (c) where agreed by the local highway authority 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 the local highway authority;
- “commuted sum” means such sum calculated as provided for in paragraph 13 of this Part of this Schedule to be used to fund the future cost of maintaining any new local highway authority assets, structures or apparatus as part of the road works provided under the Order, calculated in accordance with Schedule **X** of the Outline Construction Traffic Management Plan the extent that methodology remains current at the date the estimate is prepared, or such other successor methodology as may be published by the local highway authority at that date;
- “cable works” means any works or phase thereof under this Order which consist of the installation and maintenance of cables, cable ducts, tunnels for cables and cable ducts and related or associated works to those operations under the local road network;
- “cable works provisional certificate” means the certificate of provisional completion relating to those aspects of the cable works that have resulted in any alteration to the local road network to be issued by the local highway authority in accordance with paragraph 8 when it considers the cable works are substantially complete;
- “condition survey” means a survey of the condition of local highway authority structures and assets that in the reasonable opinion of the local highway authority may be affected by the road works or cable works which the local highway authority may require including a CCTV survey of specified drains that the local highway authority reasonably considers may be materially and adversely affected by the road works or cable works;
- “contractor” means any contractor or subcontractor appointed by the undertaker to carry out the road works or the cable works or both;
- “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, calculations, reports, surveys and other technical information as are reasonably required by the local highway authority and relevant to the road works or cable works, as applicable, to enable the local highway authority to assess the detailed design of those works and their compliance with their specification for highways works, including but not limited to—
- (a) the road works—
- (iii) site clearance details;
- (iii) boundary, environmental and mitigation fencing;
- (iii) drainage and ducting, including any culverting of roadside ditches and alterations to highway drainage assets
- (iii) pavement, pavement foundations, kerbs, footways and paved areas;
- (iii) traffic signs and road markings;
- (iii) traffic signal equipment and associated signal phasing and timing detail;
- (iii) road lighting (including columns and brackets);
- (iii) regime of California Bearing Ratio testing;
- (iii) electrical work for road lighting, traffic signs and signals;
- (iii) highway structures and any required structural approval in principle;
- (iii) landscaping;

- (iii) stage 1 and stage 2 road safety audits and exceptions agreed;
- (iii) utilities diversions;
- (iii) topographical survey; and
- (iii) health and safety information.
- (d) the cable works—
 - (iii) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk or any successor document and any required strengthened earthworks appraisal form certification;
 - (iii) health and safety information
 - (iii) regime of California Bearing Ratio testing;
 - (iii) apparatus diversions;
 - (iii) topographical survey; and
 - (iii) technical approval of highway structures under CG300 of DMRB, where highway structures form part of the cable works.

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

“estimated cost of works” means the estimated cost of carrying out the road works and the cable works or if applicable each phase thereof, insofar as those works affect the local road network or any land in which the local highway authority holds an interest, including the cost of any temporary works, traffic management, reinstatement works, remedial works, testing, supervision, road safety audit remedial measures and all other works reasonably required to complete the road works and cable works to the satisfaction of the local highway authority, as evidenced by a full breakdown and, where reasonably required by the local highway authority, a priced bill of quantities or equivalent itemised cost plan, and approved by the local highway authority

“final certificate” means the certificate relating to those aspects of the road works that have resulted in any alteration to the local road network to be issued by the local highway authority pursuant to paragraph 11;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“local highway authority” means Wiltshire Council or South Gloucestershire Council;

“local road network” means any part of the road network for which the local highway authority is the highway authority including structures drainage infrastructure, street furniture, verges and vegetation and all other highways assets together with all land, apparatus and rights located in, on, over or under the highway;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the cable works or road works as notified to the local highway authority from time to time;

“programme of works” means a document setting out the sequence and timetabling of the cable works or road works;

“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 works” means so much of any work including highway works, street works, surveys and signalisation or phase thereof authorised by this Order and including any maintenance of that work, but excluding the cable works, as is undertaken on the local road network or land in which the local highway authority has an interest;

“road works provisional certificate” means the certificate of provisional completion relating to those aspects of the road works that have resulted in any alteration to the local road network to be issued by the local highway authority in accordance with paragraph 6 when it considers the road works are substantially complete and, if relevant, may be opened for traffic;

“specification for highways works” means in relation to the road works and cable works, the standards, specifications and technical requirements reasonably required by the local highway authority and relevant to the design, construction, improvement, reinstatement, maintenance or operation of the local road network, including, where applicable:

- (g) the Wiltshire Council Highway Specification for Developers dated April 2018 to the extent applicable (or where South Gloucestershire Council is the local highway authority, its equivalent), and any adopted standard details, updates, supplements or replacement guidance published or otherwise notified by the local highway authority;
- (g) the Manual of Contract Documents for Highway Works including the Specification for Highway Works;
- (g) the Specification for the Reinstatement of Openings in Highways (SROH);
- (g) the Adoptable Highway Drainage Guidance (WCAHDG);
- (g) the DMRB;
- (g) the Traffic Signs Manual, the Traffic Signs Regulations and General Directions 2016; and,
- (g) any relevant adopted Wiltshire Council highway design guidance, standard details and technical approval requirements published or otherwise notified, except to the extent that a departure or exception from those standards is approved by the local highway authority;

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

“Permit Scheme” has the meaning within Article 2; and

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

- (7) 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.

Prior approvals

- 3. —
 - (1) The road works must not commence, save to the extent agreed otherwise by the local highway authority, until—
 - (d) 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 the local highway authority;
 - (d) the programme of works has been approved by the local highway authority;
 - (d) the detailed design of the road works comprising the following details, insofar as considered relevant by the local highway authority, has been submitted to and approved by the local highway authority—
 - (iii) the detailed design information, incorporating all recommendations and any exceptions approved by the local highway authority under paragraph (a); and
 - (iii) the identity and qualifications of the contractor and nominated persons.

- (d) a scheme of traffic management has been submitted by the undertaker and approved by the local highway authority such scheme to be capable of amendment by agreement between the undertaker and the local highway authority from time to time;
- (d) the local highway authority 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;
- (d) the undertaker has agreed the estimate of the commuted sum with the local highway authority;
- (d) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the road works (which must include winter maintenance) has been agreed in writing by the local highway authority;
- (d) the undertaker has procured to the local highway authority collateral warranties in a form approved by the local highway authority from the contractor and designer of the road works in favour of the local highway authority to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the road works, including in the selection of materials, goods, equipment and plant;
- (d) a condition survey and regime of monitoring has been agreed in writing by the local highway authority together with a highway damage redress protocol where reasonably required by the local highway authority, including provision for recovery of excess maintenance expenses arising from extraordinary traffic associated with the authorised development, including where applicable pursuant to section 59 of the 1980 Act;
- (d) details of how the undertaker will comply with the Permit Scheme, as applied and modified by [Article 9 (application of the permit schemes)], in relation to the road works, including any proposed programme, road space bookings, permit applications, traffic management arrangements and phasing of those works; and
- (d) any further information that the local highway authority may reasonably request within 14 days of the submission to the local highway authority of the detailed design of any road works.
- (7) The cable works must not commence until—
- (d) the programme of works has been approved by the local highway authority;
- (d) the detailed design of the cable works comprising the following details insofar as is considered relevant by the local highway authority has been submitted to and approved by the local highway authority—
 - (iii) the detailed design information;
 - (iii) details of the proposed road space bookings and the undertaker is entitled to submit its application for road space bookings at the same time as the relevant details are submitted under sub-paragraph (i) to the local highway authority;
 - (iii) a method statement including details of the cable works, equipment and location;
- (d) a survey to determine the appropriate minimum depth for the cable works has been carried out and the minimum cable depth has been approved by the local highway authority;
- (d) the detailed design of the cable works including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification, has been submitted to and approved by the local highway authority;
- (d) a condition survey and regime of monitoring has been agreed in writing by the local highway authority together with a highway damage redress protocol where reasonably required by the local highway authority, including provision for recovery of excess maintenance expenses arising from extraordinary traffic associated with the authorised development, including where applicable pursuant to section 59 of the 1980 Act;
- (d) the CASS01 has been approved by the local highway authority; and
- (d) the undertaker has paid to the local highway authority the estimate of the LHA costs notified to it pursuant to paragraph [5] of this Part of this Schedule;
- (d) details of how the undertaker will comply with the Permit Scheme, as applied and modified by [Article 9 (application of the permit schemes)], in relation to the cable works, including any proposed programme, road space bookings, permit applications, traffic management arrangements and phasing of those works;
- (d) any further information that the local highway authority may reasonably request within 14 days of the submission to the local highway authority of the detailed design of any cable works.
- (7) The local highway authority must, prior to the commencement of the cable works and road works or the exercise of any power referenced in sub-paragraph (3), inform the undertaker of the identity of the person who will act as a point of contact on behalf of the local highway authority for consideration of the information required under sub-paragraph (1) and (2).
- (7) Any approval of the local highway authority required under this paragraph—
 - (d) must not be unreasonably withheld;
 - (d) must be given in writing;
 - (d) in the case of a refusal, must be accompanied by written reasons identifying the respects in which the submitted information is deficient and, where reasonably practicable, the further information or amendments required to enable the local highway authority to determine the request ;
 - (d) may be subject to any conditions as the local highway authority considers necessary; and,
 - (d) For the avoidance of doubt, article 47 (procedure in relation to certain approvals etc.) does not apply to any application for consent, agreement or approval required or contemplated by this Part of this Schedule.
- (7) Any change to the identity of the contractor or designer of the road works or the cable works will be notified to the local highway authority immediately and details of their suitability to deliver the road works or cable works (as applicable) will be provided on request along with collateral warranties for the road works in a form agreed by the local highway authority.
- (7) Any change to the detailed design of the road works or cable works must be approved by the local highway authority in accordance with sub-paragraph (1) and (2).

Construction of the cable works and road works

- 4. —
 - (1) The undertaker must give the local highway authority 3 months' notice in writing of the date on which the cable works and/or road works will start unless otherwise agreed by the local highway authority.
 - (7) The cable works and road works must be carried out by the undertaker to the satisfaction of the local highway authority in accordance with—
 - (d) the relevant detailed design information and programme of works approved pursuant to paragraph 4(1) or 4(2) above or as subsequently varied by agreement between the undertaker and the local highway authority;
 - (d) the specification for highways works, together with all other relevant standards as required by the local highway authority 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 the local highway authority; and
 - (d) all aspects of the Construction (Design and Management) Regulations 2015 (“the CDM Regulations”) or any statutory amendment or variation of the same, and the undertaker will be the client and must ensure that all client duties (as defined in the CDM Regulations) are undertaken to the satisfaction of the local highway authority. No approval or consent issued by the local highway authority shall be taken to be a consent or approval pursuant to the CDM Regulations.
 - (7) The undertaker must ensure that, where practicable and without entering the highway, the highway is kept free from mud, soil and litter as a result of carrying out a road work or cable work.
 - (7) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by the local highway authority (whose identity must have been previously notified to the undertaker by the local highway authority) to gain reasonable access to the cable works and road works for the purposes of inspection and supervision of those works, and to gain reasonable access to land in which the local highway authority has an interest where access is affected by the cable works or road works or the exercise of the powers in this Order.
 - (7) If any part of the cable works or road works is constructed—

- (d) other than in accordance with the requirements of this Part of this Schedule; or
- (d) in a way that causes damage to the highway, highway structure or asset of the local highway authority,

The local highway authority 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 the local highway authority.

- (7) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the local road network then the local highway authority may by notice in writing require the undertaker, at its own expense, to remedy the damage.
- (7) If, within 28 days from the day on which a notice under sub-paragraph (6) or (7) is served on the undertaker (or, in the event of there being, in the opinion of the local highway authority, a danger to road users, within such lesser period as the local highway authority may stipulate in the notice), the undertaker has failed to take the steps required by that notice, the local highway authority may carry out the steps required of the undertaker by that notice and may recover from the undertaker any expenditure reasonably incurred by the local highway authority in so doing, such sum to be payable within 28 days of written demand.
- (7) Nothing in this Part of this Schedule prevents the local highway authority 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 the local highway authority may recover any expenditure it reasonably incurs in so doing
- (7) In constructing the cable works and road 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 the local highway authority.
- (7) Until such time that the local highway authority issues the road works provisional certificate, the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by the local highway authority pursuant to paragraph 3(1)(g) and the undertaker must carry out such maintenance at its own cost.
- (7) The undertaker must notify the local highway authority if it fails to complete the road works or cable works in accordance with the agreed programme pursuant to paragraph 4(1)(b) and 4(2)(a) of this Part or suspends the carrying out of any road work or cable work beyond a reasonable period of time.

Payments

5.-

- (1) The undertaker must pay to the local highway authority a sum equal to the costs and expenses which the local highway authority reasonably and properly incurs (including costs and expenses for using internal or external staff and costs relating to work which becomes abortive) in relation to the cable works and road works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—
- (d) the checking and approval of the information required under paragraphs 4(1) and 4(2);
- (d) the supervision of the cable works and road works;
 - (e) the checking and approval of the information required to determine approvals under this Part;
 - (e) all administrative costs and disbursements incurred by local highway authority in connection with the exercise by the undertaker of the powers in the Order and paragraphs (a) to (c) of this sub-paragraph; and
 - (e) any value added tax which is payable by the local highway authority in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the LHA costs”.

- (7) The undertaker must pay to the local highway authority upon demand and prior to such costs being incurred the total costs that the local highway authority believe will be properly and necessarily incurred by the local highway authority 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.
- (7) The local highway authority must provide the undertaker with its estimate of the LHA costs calculated in accordance with the Inspection Code of Practice prior to the commencement of the cable works and road works. The undertaker must pay to the local highway authority the estimate of the LHA costs prior to commencing the road works or cable works.
- (7) If at any time after the payment referred to in sub-paragraph (3) has become payable, the local highway authority reasonably believes that the LHA costs will exceed the estimated LHA costs it may give notice to the undertaker of the amount that it believes the LHA costs will exceed the estimate of the LHA costs (the excess) and the undertaker must pay to the local highway authority within 28 days of the date of receipt of a properly issued VAT invoice from the local highway authority addressed to the undertaker for the excess sum, a sum equal to the excess.
- (7) The local highway authority must give the undertaker a final amount of the LHA costs referred to in sub-paragraph (1) above within 91 days of the issue of both the road works provisional certificate and the cable works provisional certificate issued pursuant to paragraph 7(4) and 8(4).
- (7) Within 30 days of the issue of the final account—
 - (e) if the final account shows a further sum as due to the local highway authority the undertaker must pay to the local highway authority the sum shown due to it;
 - (e) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by the local highway authority, the local highway authority must refund the difference to the undertaker.
- (7) If any payment due under 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.
- (7) Prior to the commencement of road works or cable works at each relevant works location or construction access, the undertaker must pay to the local highway authority a refundable mud deposit of £1,000, or such other sum as may be agreed in writing with the local highway authority, to be held by the local highway authority as security for the reasonable costs of any cleaning, sweeping or removal of mud, soil, litter or other deleterious material from the local road network which is attributable to the road works, cable works or construction traffic associated with the authorised development.
 - (7) The local highway authority may apply the mud deposit towards any such reasonable costs incurred by it where the undertaker has failed to carry out the necessary cleaning or sweeping within the period reasonably required by the local highway authority, or immediately where the local highway authority reasonably considers that urgent action is required in the interests of highway safety.

- (7) Any unapplied balance of the mud deposit must be returned to the undertaker within 28 days of the issue of the relevant provisional certificate or, where no provisional certificate is required for the relevant works location or construction access, within 28 days of completion of the relevant road works or cable works at that location.

Provisional Certificate for road works

6. —

- (1) Following the completion of any road works or prior to the reopening of any part of the local road network following any closure or partial closure, whichever is earlier, the undertaker must notify the local highway authority and the local highway authority will carry out a site inspection to satisfy itself that

the local road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of the local highway authority following the site inspection.

- (7) As soon as the undertaker considers that the road works provisional certificate may be properly issued it must apply to the local highway authority for the road works provisional certificate.
- (7) Following an application for a road works provisional certificate, the local highway authority must as soon as reasonably practicable—
 - (e) inspect the road works; and
 - (e) provide the undertaker with a written list of works that are required for the road works provisional certificate to be issued or confirmation that no further works are required for this purpose.
- (7) When—
 - (e) a stage 3 road safety audit for the road works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by the local highway authority;
 - (e) the road works incorporating the approved remedial works under paragraph (a) and any further works notified to the undertaker pursuant to sub-paragraph (3)(b) have been completed to the satisfaction of the local highway authority;
 - (e) the as-built information has been provided to the local highway authority; and
 - (e) the undertaker has paid the commuted sum to the local highway authority

the local highway authority must issue the road works provisional certificate.

- (7) On the issue of the road works provisional certificate pursuant to this paragraph 6 and the cable works provisional certificate pursuant to paragraph 7 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 the local highway authority are joined howsoever they arise) before that date the local highway authority 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 road works or cable works.
- (7) 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 the local highway authority.

Provisional Certificate for cable works

- 7. —
 - (1) As soon as the undertaker considers that the cable works provisional certificate for the cable works may be properly issued it must apply to the local highway authority for the cable works provisional certificate.
- (7) Following an application for a cable works provisional certificate, the local highway authority must as soon as reasonably practicable—
 - (e) inspect the cable works, the local road network, and any land in which the local highway authority has an interest that is affected by the cable works; and
 - (e) provide the undertaker with a written list of works that are required for the cable works provisional certificate to be issued or confirmation that no further works are required for this purpose.
- (7) Within 28 days of the completion of any cable works, the undertaker must submit to the local highway authority the as built information.
- (7) When the cable works, incorporating any further works notified to the undertaker pursuant to sub-paragraph (2)(b), have been completed to the satisfaction of the local highway authority and the as built information has been provided to the local highway authority, the local highway authority must issue the cable works provisional certificate.
- (7) The undertaker must make available to the local highway authority upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any cable works, following completion of the inspection or survey, that the undertaker may from time to time carry out.

Opening

8. Unless otherwise agreed in writing by the local highway authority the undertaker must notify the local highway authority not less than 56 days in advance of the intended date of opening to the public of the local road network and the undertaker must notify the local highway authority of the actual date the local road network will be opened to the public within 14 days of that date and must not open the local road network to the public prior to the expiration of the requisite notice period.

Final condition survey

- 9. —
 - (1) The undertaker must, as soon as reasonably practicable after making its application for the road works provisional certificate pursuant to paragraph 7(2) and the cable works provisional certificate pursuant to paragraph 8(1), arrange for any highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to the local highway authority for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 for the cable works, road works and any other works beneath the local road network.
- (7) If the re-surveys carried out pursuant to sub-paragraph (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 the local highway authority for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted and such programme as the local highway authority may require.
- (7) If the undertaker fails to carry out the remedial work in accordance with the approved scheme and programme or fails to submit a scheme for remedial works to the local highway authority, the local highway authority may carry out the steps required of the undertaker and may recover from the undertaker any expenditure it reasonably incurs in so doing.
- (7) the local highway authority may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to sub-paragraph (1) give notice in writing that the local highway authority will remedy any damage identified in the re-surveys and the local highway authority may recover from the undertaker any expenditure it reasonably incurs in so doing.
- (7) The undertaker must make available to the local highway authority upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any cable work or road work following its completion that the undertaker may from time to time carry out.

Defects Period

- 10. —
 - (1) The undertaker must at its own expense remedy any defects in the local road network resulting from the carrying out of the road works as are reasonably required by the local highway authority to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—
- (d) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of the local highway authority);
 - (e) in respect of matters which the local highway authority considers to be serious defects or faults, within 14 days of receiving notification of the same; and
 - (e) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

- (7) Following the issuing of the road works provisional certificate, the local highway authority has responsibility for routine maintenance of the local 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

11. —
- (1) The undertaker must apply to the local highway authority for the final certificate no sooner than 12 months from the date of the issuing of both the road works provisional certificate and the cable works provisional certificate.
- (7) Following receipt of the application for the final certificate, the local highway authority must as soon as reasonably practicable—
- (e) inspect the local road network; and
 - (e) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the local road network as resulting from the cable works or road works or confirmation that no such works are required for this purpose.
- (7) The undertaker must carry out such works notified to it pursuant to sub-paragraph (2).
- (7) When the local highway authority is satisfied that—
- (e) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph (2) and any remedial works required as a result of any relevant stage 4 road safety audit have been made good to the satisfaction of the local highway authority; and
 - (e) the LHA costs have been paid to the local highway authority in full;
- the local highway authority must issue the final certificate.
- (7) The bond sum is released in full upon the issue of the final certificate, 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 will also include any claim or claims to which the local highway authority are joined howsoever they arise) the local highway authority will be at liberty to retain a sufficient sum to ensure it does not have to meet any costs for or arising from or in connection with the road works or cable works.
- (7) The undertaker must pay to the local highway authority within 28 days of the date of receipt of a properly issued invoice from the local highway authority addressed to the undertaker, the reasonable costs incurred by the local highway authority 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.

Security

12. —
- (4) The road works and cable works must not commence until the undertaker procures that the road works and cable works (or if applicable any phase thereof) are secured by the bond sum to indemnify the local highway authority 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 road works and cable works under the provisions of this Part of this Schedule.
- (4) The undertaker must submit the estimated cost of works to the local highway authority for approval before commencing the relevant road works or cable works. Where the road works or cable works are to be carried out in phases, the estimated cost of works and the bond sum may be calculated and provided by reference to the relevant phase, provided that no road works or cable works in that phase may commence until the bond sum for that phase has been provided.
- (4) If, before the issue of the relevant provisional certificate, the local highway authority reasonably considers that the approved estimated cost of works is no longer adequate because of a material change to the approved design, scope, programme, specification or cost of the road works or cable works, the undertaker must submit a revised estimated cost of works for approval and must provide any additional bond or cash surety reasonably required to maintain the bond sum at the level required by this Part of this Schedule.
- (4) If at any time the undertaker is in breach of these provisions of this Part of this Schedule or becomes insolvent without prejudice to any other remedy the local highway authority is entitled upon giving notice to the undertaker to use such parts of the bond sum as the local highway authority considers necessary. For the avoidance of doubt should the local highway authority have to carry out works pursuant to this Part of this Schedule it may, at its sole discretion, use the bond sum to forward fund such works.

Commuted sums

13. —
- (1) The local highway authority must provide to the undertaker an estimate of the commuted sum prior to the commencement of the road works.
- (7) The undertaker must pay to the local highway authority the commuted sum prior to the issue of the road works provisional certificate.

Insurance

14. Prior to the commencement of the cable works and road 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 the cable works or road works or use of the local road network by the undertaker.]

Indemnity

15. —
- (1) The undertaker fully indemnifies the local highway authority from and against all costs, claims, expenses, damages, losses and liabilities suffered by the local highway authority arising from, or in connection with—
- (e) the construction, maintenance or use of the road works before the issue of the final certificate for the relevant road works;
 - (e) the construction, maintenance, use, removal, reinstatement or decommissioning of the cable works;
 - (e) the exercise of, or failure to exercise, any power under this Order in respect of the local road network or any land in which the local highway authority holds an interest; and
 - (e) any claim for compensation arising under any statutory compensation code in connection with the matters referred to in sub-paragraphs (a) to (c),
- and any such costs must be paid to the local highway authority within 14 days of an itemised demand.
- (7) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—
- (e) any damage, loss, liability, cost, claim or expense to the extent that it is attributable to the negligence, neglect or default of the local highway authority, its officers, employees, contractors or agents; or
 - (e) any road works or cable works carried out by the local highway authority as an assignee, transferee or lessee of the undertaker with the benefit of this Order.
- (7) The local highway authority must give the undertaker reasonable notice of any third party claim or demand to which the indemnity under this paragraph may apply and no settlement, admission of liability or compromise may be made by the local highway authority, unless payment is required in

connection with a statutory compensation scheme or by order of a court or tribunal of competent jurisdiction, without first consulting the undertaker and considering any representations made by the undertaker.

(7) The local highway authority must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, act reasonably and in the same manner as it would if settling third party claims on its own behalf from its own funds.

(7) The local highway authority must use its reasonable endeavours to mitigate and minimise any costs, claims, expenses, damages, losses and liabilities to which the indemnity under this paragraph applies where it is within the local highway authority's reasonable ability and control to do so, but this does not require the local highway authority to mitigate any liability arising from third parties outside the local highway authority's control.

Maintenance of the authorised development

16. —

(1) The undertaker must, prior to the commencement of any works of maintenance to the cable works or road works, give the local highway authority 28 days' notice in writing of the date on which those works will start unless otherwise agreed by the local highway authority, acting reasonably.

(7) During any maintenance works, the undertaker must comply with any requirements that the local highway authority 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.

(7) The provisions of paragraph 9 shall apply to the opening of any part of the local road network following occupation of any road space under this paragraph.

Land

17. —

(3) Following the issue of the final certificate pursuant to paragraph 12(4) the local highway authority may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of the local road network boundary, or any land which is to form part of the local road network following completion of the road works, which is not in the ownership of the local highway authority but has been acquired by the undertaker for the purposes of carrying out the road works.

(3) 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 the local highway authority.

(3) The undertaker must not exercise the powers of this Order over any land forming part of the local road network or land owned by the local highway authority, other than with the consent of the local highway authority (such consent not to be unreasonably withheld and delayed), so as to—

- (e) acquire or use the land;
- (e) acquire new or existing rights in the land;
- (e) impose or extinguish any restrictive covenant over the land;
- (e) extinguish any existing rights held by the local highway authority; or
- (e) interfere with the apparatus of the local highway authority.

(3) A consent under sub-paragraph (3) must be requested in writing by email to Wiltshire Council at northernhighways@wiltshire.gov.uk, or South Gloucestershire Council at **[X]**.

Expert Determination

2.—

(7) Article 44 (arbitration) of the Order does not apply to this Part of this Schedule, except in relation to a dispute concerning the legal interpretation of this Part of this Schedule.

(7) Any difference or dispute arising between the undertaker and the local highway authority under this Part of this Schedule may be referred to and settled by a single independent and suitably qualified person holding appropriate professional qualifications and being a member of a professional body relevant to the matter in dispute, acting as an expert and not as an arbitrator, 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.

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

(7) 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.

(7) The expert must—

(d) 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;

(d) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(d) use reasonable endeavours to issue a decision within 7 days of receipt of the submissions under paragraph (b); and

(d) give reasons for the decision.

(7) The expert's determination is final and binding, except in the case of manifest error in which case the difference may be referred to and settled by arbitration under article 44 (arbitration).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.