

Lime Down Solar Park - Deadline 6

Explanatory note: Wiltshire Council proposed amendments to Schedule 15, Part 11

This note accompanies Wiltshire Council's proposed tracked amendments to Schedule 15, Part 11 of the Rev 5 dDCO. It identifies the remaining critical amendments which Wiltshire asks the ExA and Secretary of State to adopt if the local highway authority protective provisions are not otherwise agreed.

Issue	Reason
Scope/application Art 139	Rev 5 applies Part 11 only to road works and cable works. Wiltshire's previous submissions explain that construction traffic can affect the local road network outside the footprint of those works. The additional limb is needed so that condition survey, monitoring, highway damage redress, mud control, step-in, cost recovery, security and indemnity provisions are engaged where construction traffic causes, or may reasonably be expected to cause, physical damage, abnormal deterioration, obstruction or contamination of the local road network.
"Estimated cost of works" definition Art 140(3)	The bond sum is calculated by reference to the estimated cost of works. Rev 5 omits the definition of that term, leaving the calculation insufficiently anchored. Wiltshire's definition identifies the categories of cost to be included, including temporary works, traffic management, reinstatement, 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.
"Committed sum" definition Art 140(3)	Wiltshire can accept reference to a methodology in the outline CTMP only if that methodology remains current when the estimate is prepared. The DCO should not freeze Wiltshire into an outdated methodology or require the undertaker's agreement before a successor published or approved local highway authority methodology can apply.
"Detailed design information" definition Art 140(3)	Wiltshire's preferred drafting reinstates electrical work for road lighting, traffic signs and signals as part of road works detailed design information. This is a technical completeness amendment.
Defects period and Maintenance until final certificate Art 148(2)	Rev 5 ends the undertaker's maintenance responsibility when it applies for the final certificate. That is not acceptable : 1. The applicant's amendment is misconceived as a matter of highway law and orthodox highway practice. Under the Highways Act 1980 model, reflected in sections 37 and 38 practice and DfT adoption guidance, the relevant trigger is not the developer's application for certification. 2. The relevant trigger is the highway authority being satisfied that the works, maintenance period, defects, remedial works, final information and committed sum/cost matters have been properly completed. 3. An application for a final certificate proves only that the undertaker says it is ready to hand the asset back; it does not prove that the works have been inspected, that defects have been remedied, that as-built information is complete, that damage attributable to construction traffic has been resolved, or that the highway is in a condition which the public authority should maintain at public expense.

Issue	Reason
	4. The Applicant's amendment would make the end of highway maintenance responsibility turn on the undertaker's unilateral election, rather than on the local highway authority's objective acceptance that the work is complete, safe, defect-free and maintainable. 5. An application is only the start of the final certificate process. Maintenance should remain with the undertaker until the local highway authority issues the final certificate. 6. This is not a timing issue; it is a transfer of risk from the undertaker to the public highway authority before the authority has accepted the asset as safe and having met objective highways engineering standards. 7. The correct trigger is issue of the final certificate. If the Applicant is concerned about delay, the proper remedy is the dispute mechanism.
Expert determination Art 156	Wiltshire can accept the National Highways-style timescales, but the drafting should clarify when the expert is appointed so that there is no open-ended gap between notification of a dispute, identifying an expert and commencement of the 7/7/7 expert process.

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Wiltshire Council proposed amendments to Protective Provisions Schedule 15, Part 11 of the Rev 5 dDCO

PART 11 FOR THE PROTECTION OF THE LOCAL HIGHWAY AUTHORITY

Application etc.

139.—(1) The provisions of this Part of this Schedule have effect in relation to—
(a) the road works and cable works (as defined under paragraph 140); and
(b) 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

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

(3) 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 —

- (a) drawings showing the as constructed local highways in an appropriate format (including digital storage media);
- (b) drawings showing the location for utilities installed in the local highway;
- (c) 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
- (e) 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—

- (a) a bond; or

(b) 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 151 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 the methodology set out in Schedule [X] of the outline construction traffic management plan to the extent that methodology remains current at the date the estimate is prepared, or such other amended, supplemented or replacement methodology as may be published or otherwise approved by the local highway authority and applicable at that date, or such other methodology as may be agreed in writing with the local highway authority;

“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 145 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 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—

- (i) site clearance details;
- (ii) boundary, environmental and mitigation fencing;
- (iii) drainage and ducting, including any culverting of roadside ditches and alterations to highway drainage assets;
- (iv) pavement, pavement foundations, kerbs, footways and paved areas;
- (v) traffic signs and road markings;
- (vi) traffic signal equipment and associated signal phasing and timing detail;
- (vii) road lighting (including columns and brackets);
- (viii) regime of California Bearing Ratio testing;
- (ix) electrical work for road lighting, traffic signs and signals;
- (x) highway structures and any required structural approval in principle;
- (xi) landscaping;
- (xii) stage 1 and stage 2 road safety audits and exceptions agreed;
- (xiii) utilities diversions;
- (xiv) topographical survey; and
- (xv) health and safety information.

(b) the cable works—

- (i) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk or any successor document and any required strengthened earthworks appraisal form certification;

- (ii) health and safety information;
- (iii) regime of California Bearing Ratio testing;
- (iv) apparatus diversions;
- (v) topographical survey; and
- (vi) 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 149;

“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 144 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:

- (a) 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;
- (b) the Manual of Contract Documents for Highway Works including the Specification for Highway Works;
- (c) the Specification for the Reinstatement of Openings in Highways (SROH);
- (d) the Adoptable Highway Drainage Guidance (WCAHDG);
- (e) the DMRB;
- (f) 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 (interpretation); and

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

(4) 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

141.—(1) The road works must not commence, save to the extent agreed otherwise by the local highway authority, 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 the local highway authority;
- (b) the programme of works has been approved by the local highway authority;
- (c) 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 —
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by the local highway authority under sub-paragraph (1)(a); and
 - (ii) 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;
- (e) 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;
- (f) the undertaker has agreed the estimate of the commuted sum with the local highway authority;
- (g) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the road works (which must include winter maintenance) has been agreed in writing by the local highway authority;
- (h) 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;
- (i) 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;
- (j) 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
- (k) 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.

(2) The cable works must not commence until—

- (a) the programme of works has been approved by the local highway authority;
- (b) 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—
 - (i) the detailed design information;
 - (ii) details of the proposed road space bookings and the undertaker is entitled to submit its application for road space bookings at the same time as the relevant details are submitted under sub-paragraph (i) to the local highway authority;
 - (iii) a method statement including details of the cable works, equipment and location;
- (c) a survey to determine the appropriate minimum depth for the cable works has been carried out and the minimum cable depth has been approved by 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;
- (e) 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;
- (f) the CASS01 has been approved by the local highway authority; and
- (g) the undertaker has paid to the local highway authority the estimate of the LHA costs notified to it pursuant to paragraph 143 of this Part of this Schedule;
- (h) 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; and
- (i) 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.

(3) The local highway authority must, prior to the commencement of the cable works and road works or the exercise of any power under this Part, 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).

(4) Any approval of the local highway authority required under this paragraph—

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

(5) 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.

(6) 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

142.—(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.

(2) The cable works and road works must be carried out by the undertaker to the satisfaction of the local highway authority in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 141(1) or 141(2) or as subsequently varied by agreement between the undertaker and the local highway authority;
- (b) 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
- (c) 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.

(3) 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.

(4) 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.

(5) If any part of the cable works or road works is constructed—

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

(6) 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 (5) or (6) 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.

(8) 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.

(9) 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.

(10) Until such time that the local highway authority issues the final 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 141(1)(g) and the undertaker must carry out such maintenance at its own cost.

(11) 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 141(1)(b) and (2)(a) of this Part or suspends the carrying out of any road work or cable work beyond a reasonable period of time.

Payments

143.—(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 —

- (a) the checking and approval of the information required under paragraphs 141(1) and 141(2);
- (b) the supervision of the cable works and road works;
- (c) the checking and approval of the information required to determine approvals under this Part;
- (d) 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”.

(2) 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 believes 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.

(3) The local highway authority must provide the undertaker with its estimate of the LHA costs 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.

(4) 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.

(5) 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 144(4) and 145(4).

(6) Within 30 days of the issue of the final amount—

- (a) if the final amount identifies 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;
- (b) if the final amount identifies 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.

(8) 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.

(9) 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.

(10) 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

144.—(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.

(2) 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.

(3) Following an application for a road works provisional certificate, the local highway authority must as soon as reasonably practicable —

- (a) inspect the road works; and
- (b) 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.

(4) When—

- (a) 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;
- (b) 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;
- (c) the as built information has been provided to the local highway authority; and
- (d) the undertaker has paid the commuted sum to the local highway authority,

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

(5) On the issue of the road works provisional certificate pursuant to this paragraph 144 and the cable works provisional certificate pursuant to paragraph 145 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.

(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 the local highway authority.

Provisional Certificate for cable works

145.—(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.

(2) Following an application for a cable works provisional certificate, the local highway authority must as soon as reasonably practicable —

- (a) 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
- (b) 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.

(3) Within 28 days of the completion of any cable works, the undertaker must submit to the local highway authority the as built information.

(4) 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.

(5) 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

146. 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

147.—(1) The undertaker must, as soon as reasonably practicable after making its application for the road works provisional certificate pursuant to paragraph 144(2) and the cable works provisional certificate pursuant to paragraph 145(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.

(2) 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.

(3) 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.

(4) 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.

(5) 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

148.—(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—

- (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 the local highway authority);
- (b) 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
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the issue of the final 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

149.—(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.

(2) Following receipt of the application for the final certificate, the local highway authority must as soon as reasonably practicable—

- (a) inspect the local 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 local road network as resulting from the cable works or road works 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 (2).

(4) When the local highway authority 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
- (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
- (b) the LHA costs have been paid to the local highway authority in full,

the local highway authority must issue the final certificate.

(5) 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.

(6) 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

150.—(1) 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.

(2) If at any time the undertaker is in breach of these provisions of this Part of this Schedule or becomes insolvent without prejudice to any other remedy 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

151.—(1) The local highway authority must provide to the undertaker an estimate of the commuted sum prior to the commencement of the road works.

(2) The undertaker must pay to the local highway authority the commuted sum prior to the issue of the road works provisional certificate.

Insurance

152. 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

153. —(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—

- (a) the construction, maintenance or use of the road works before the issue of the final certificate for the relevant road works;
- (b) the construction, maintenance, use, removal, reinstatement or decommissioning of the cable works;
- (c) 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
- (d) 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.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) 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
- (b) 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.

(3) 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.

(4) 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.

(5) 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

154.—(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.

(2) 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.

(3) The provisions of paragraph 146 shall apply to the opening of any part of the local road network following occupation of any road space under this paragraph.

Land

155.—(1) Following the issue of the final certificate pursuant to paragraph 149(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 the freehold of the land has been acquired by the undertaker for the purposes of carrying out the road works.

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

- (a) acquire or use the land;
 - (b) acquire new or existing rights in the land;
 - (c) impose or extinguish any restrictive covenant over the land;
 - (d) extinguish any existing rights held by the local highway authority; or
 - (e) interfere with the apparatus of the local highway authority.
- (4) 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

156.—(1) 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.

(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 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.

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

(3A) For the purposes of this paragraph, the expert is appointed on the date on which the expert confirms acceptance of the appointment.

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

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

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

(c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 44.

(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.