

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

**Application by Light Valley Solar Limited for an Order granting Development Consent for the
Light Valley Solar Project.**

Planning Inspectorate Reference Number: EN0110012

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

1. OVERVIEW

- 1.1 This written representation is made on behalf of National Highways ("NH") and sets out the outstanding matters in connection with an application by Light Valley Solar Limited ("**Applicant**") for an order granting development consent for the Light Valley Solar Farm Project (Planning Inspectorate Reference: EN0110012).
- 1.2 NH is the statutory body responsible for England's motorways and major A-roads (the strategic road network or "SRN"). NH supports the proposed development and highway mitigation works but currently **objects** to the application for the proposed Development Consent Order (DCO). However, NH expresses willingness to engage constructively with the Applicant to resolve the outstanding matters, which it believes is achievable within the Examination period.
- 1.3 NH has previously submitted a Relevant Representation in connection with the proposed DCO. NH does not seek to rehearse those matters in this Written Representation but instead continues to rely on the positions advanced in its Relevant Representation as updated by this Written Representation. This Written Representation also provides
 - 1.3.1 Additional information in relation to land interests and the Applicant's proposal to acquire compulsory purchase powers over NH land to which NH objects; and
 - 1.3.2 An update in relation to progress between NH and the Applicant in relation to agreeing a satisfactory form of Protective Provisions for the Protection of NH.

2. UPDATE ON TECHNICAL MATTERS

Traffic Management

- 2.1 The key interfaces between the Authorised Development and the SRN that will be impacted include sections of the A64 to the north, the M62 to the south, and the A1(M) to the west. NH's concerns regarding impacts on the SRN and how / the extent to which these have been addressed within the application documents was set out in NH's Relevant Representation. An update on the latest position is set out below.

Impacts on the SRN

- 2.2 NH can confirm that each of the points raised in NH's Relevant Representation in relation to Traffic and Movement have been resolved between NH and the Applicant, subject to certain updates to the Requirements in Schedule 2, Schedule 16 of the dDCO and the draft plans as highlighted in bold below. The rationale for the position and the updates required to the Requirements are set out in the table below.

Relevant Representation Paragraph and Position	Updated Position and Rationale and any update to the Requirements
Traffic and Movement [APP-052]	
6.3 The Applicant should provide a detailed methodology for the TEMPro growth factors used to uplift baseline traffic data and forecast future baseline traffic flows.	Following correspondence with the Applicant, NH have reviewed Section 2.3 of the TA. NH note from Paragraph 2.3.4 that there will be traffic growth from the 2025 Baseline flows to 2029 which is predicted to be the peak of construction, with construction having commenced in 2028. In addition, the Applicant in its response in point 6.7 states that <i>“an estimated impact at the A1(M) junction of up to 20 additional trips in total (10 each way) during the highway network AM and PM peaks.”</i> NH consider that this quantum of movements on the junction is, therefore, unlikely to have a material impact on the operation of this junction.
6.4 - The Applicant should secure a requirement for a Decommissioning Traffic Management Plan, to be submitted to and approved in consultation with NH before decommissioning commences.	The Applicant has prepared an Outline Decommissioning Environmental Management Plan (oDEMP) and has advised that the development of a Decommissioning Traffic Management Plan (DTMP) is a commitment in the oDEMP and will need to be approved prior to the commencement of the decommissioning phase of the Proposed Development. NH has reviewed the draft Outline Decommissioning Environmental Management Plan (oDEMP) that has been developed and notes the commitment in Table 3-11 to the preparation of a Decommissioning Traffic Management Plan (DTMP). Requirement 19 should be updated to include NH as a consultee when the final DEMP is submitted for approval. This would be consistent with other draft DCO's such as that for the Green Hill Solar Farm [EN10170]
6.4 - The Applicant should outline a strategy to monitor the implementation of the proposed travel schedules for deliveries and construction workers.	The Applicant has prepared an Outline Construction Traffic Management Plan (oCTMP) has been prepared which includes a commitment for construction vehicles to avoid travel during peak highway network periods. A final Construction Traffic Management Plan (CTMP) will be developed by the appointed Principal Contractor (PC) prior to the commencement of construction. This will set out the measures to be implemented, including the use of a vehicle booking system to minimise, where reasonably practicable, construction traffic movements during peak hours. The detailed CTMP will be submitted to National Highways for review and approval ahead of construction. NH has reviewed the submitted Outline Construction Traffic Management Plan and notes the commitment to a delivery booking system in paragraph 3.13.1. NH also notes that the defined construction hours means that the majority of construction workers will travel outside of the typical weekday peak hours which NH considers satisfactory. NH will also be a consultee when the final plan is submitted to the local planning authority. NH is, therefore, content with this position subject to Schedule 16 of the dDCO being updated as noted below.

6.6 - The Applicant should involve NH as early as practicable in the management and routing of any Abnormal Indivisible Loads.	The Applicant has confirmed that as reported in the Abnormal Load Report (Annex C of TA), the operator will accord with the relevant processes to agree access to the Proposed Development and further that the relevant team within National Highways have been made aware of the AIL requirements for this project. NH are content with this position. This commitment should also be referenced in the oCTMP.
6.7 - The Applicant should notify NH of any amendments to construction routing where those changes may affect the SRN.	NH note that the oCTMP provides detail on construction vehicle routing. Traffic diagrams have been provided (and NH confirm that these have been discussed at previous meetings with NH). Further the Applicant has referred to analysis which shows construction traffic resulted <1% change in daily traffic flows at the A1(M) junction 42 and states that to give an indication on the potential impacts during the network peaks, information from other solar developments has been reviewed and discussed with NH. The Applicant notes that this resulted in an estimated impact at the A1(M) junction of up to 20 additional trips in total (10 each way) during the highway network AM and PM peaks. NH notes this position and on the basis that the "estimated impact at the A1(M) junction of up to 20 additional trips in total (10 each way) during the highway network AM and PM peaks." (as confirmed by the Applicant") NH considers that this is unlikely to have a material impact on the operation of this junction.
Outline Construction Traffic Management Plan [APP-201]	
6.8 - The Applicant should agree any signage proposed on the SRN with the relevant NH team before works commence.	The Applicant has indicated that signage would be agreed with relevant highway authorities prior to commencement of construction, which is welcome. NH's position is that as the A1(M) is under motorway regulations NH would not, however, permit any construction directional signage on the A1(M) and the Outline Construction Traffic Management Plan should acknowledge this.
6.9 - The Applicant should ensure that any works on the SRN, including temporary signage, are supported by a safety audit and risk assessment and, where inside the redline boundary are carried out in accordance with NH's protective provisions. If works are necessary on the SRN outside the redline boundary they must be progressed through a Section 278 Agreement.	The Applicant has confirmed that no works are expected on the SRN. Should works be required any signage would be agreed with NH prior to commencement of construction.
6.10 - The Applicant should ensure that vehicular trips generated by waste management activities are included in the	The Applicant has confirmed that construction trip forecasts are based on trips from other, similar construction sites and include the removal of any waste materials. NH note this response.

assessment of construction traffic impacts on the SRN.	
6.11 - The Applicant should include in the final Construction Traffic Management Plan the traffic management measures identified in the Outline Construction Environmental Management Plan. Outline Decommissioning Environmental Management Plan	The Applicant has agreed to this. NH note that the final CTMP and DEMP are to be substantially in accordance with the outline plans. Requirement 3 permits, however, certified documents (which includes these outline plans) to be varied with the planning authority's consent. To the extent that any of the certified documents are to be varied NH would wish to be consulted. Schedule 16 of the dDCO is inconsistent with changes that have been made to other dDCOs. In the case of the Greenhill Solar by the close of the examination Schedule 16 was updated to include the following: Interpretation <u>1. (1) In this Schedule—</u> “discharge” means any consent, agreement or approval required by— (a) a requirement; (b) a document referred to by a requirement; or (c) a document that has been approved pursuant to a requirement; “requirement consultee” means— <u>(a) any body or authority named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement; and</u> <u>(b) in relation to an application made under requirement 3 to amend an approved document (as defined in requirement 3), any body or authority that was required to be consulted in relation to the approval of that approved document; and</u> “start date” means the date of the notification given by the Secretary of State under paragraph 4(2)(b). <u>(2) In the event an application is made to discharge more than one consent, agreement or approval, this must be treated as though separate applications were made for the discharge of each consent, agreement or approval.</u> The dDCO should be updated to reference consultation with National Highways in Requirement 3 and to update Schedule 16 as outline above.

Outline Decommissioning Environmental Management Plan [APP-194]	
6.12 - NH requests that it is included in the list of identified stakeholders.	The Applicant has agreed to this and as noted above Requirement 19 should be updated to reference consultation with National Highways.

Additional Technical Issues

- 2.3 It is understood that the solar panels have a life of 40 years and that the development will be decommissioned after 60 years. NH require to be consulted at the relevant time on the plans to replace the solar panels as set out in the oCTMP/CTMP requirement/PP's/oOEMP/oDMPT. Given that traffic movements are limited for construction, and it is only the panels that are being replaced, (not the frames and cabling), then it is anticipated by NH that the impact on replacement will be less than the initial construction. So in a scenario where NH are content with construction traffic, NH should not have an issue with traffic associated with replacing the panels. As noted above NH does, however, need to be a consultee for approval of the DEMP that is to incorporate the DTMP so that should this not be the case or circumstances have changed NH is able to secure the necessary mitigation to limit the impact on the SRN.
- 2.4 NH note the discussion at Issue Specific Hearing 1 in relation to the A63/ A162 roundabout improvements and potential Traffic Regulation Order including through Chapel Haddlesey. NY Council confirmed that even with planned and funded works to the roundabout – the roundabout will still have capacity issues. The Applicant advised that alternative routes were proposed in the ES and the Applicant was asked to confirm that alternative routes are not via the SRN. NH have checked Environmental Statement Volume 2 - Figure 14.4 Construction Routing (Sheets 1 to 9 of 9) and note that all the alternative construction routes are on the Local Road Network. The plans only show one point where the construction routes join the SRN which is at A1(M) J42.

3. DRAFT DCO AND PROTECTIVE PROVISIONS

- 3.1 NH welcomes the inclusion of protective provisions for its benefit in Schedule 15 of the draft DCO which address a number of concerns it would otherwise have regarding some of the articles within the draft DCO. That said, these protective provisions are not agreed and NH has concern with other articles in the dDCO that are not currently addressed by the protective provisions. The protective provisions included in the draft DCO also do not fully reflect the template provisions that NH asks to be included in DCOs of this nature. Appended to this written representation are a form of the protective provisions updated to reflect the changes that NH would expect to see.
- 3.3 By way of further explanation for the changes:

Paragraph	Heading	Justification
62(3)	Interpretation	This sub-paragraph needs to be clear that no works in carrying out, maintaining diverting or decommissioning the authorised development may be carried out in, under or over the strategic road network unless those works are agreed with National Highways and the written consent of National Highways has been obtained pursuant to this Part of this Schedule.
64(1)	Prior approvals and security	Where road works are to take place on the SRN the details to be submitted should include information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding or any successor document;
64(2)	Prior approvals and security	Where cable works are to be undertaken that affect the SRN then NH's costs should be paid prior to those works commencing in line with other solar projects where NH is an interested party. It is understood that, in this instance, the cable works should not affect the SRN. That said the drafting should reflect NH's usual approach for cable works in case that position changes. NH's standard and reasonable position is that reasonable costs incurred by NH in the administration of the design approval process, the transfer of land, supervision of works, legal costs and VAT should be payable by the Applicant where works affect the SRN or land that NH has an interest. But for the Applicant's scheme, NH would not have to expend resources on the cable or road works.
64(3)	Prior approvals and security	NH welcomes the limitation of the exercise of certain powers in the DCO without NH's consent where the powers are being exercised over the SRN or land which NH has an interest. The reference to "save in emergency" should, however, be deleted. The New Roads and Street Works Act 1991 deal with emergency works and otherwise NH's consent should be secured at all times. The list of articles is also incomplete and needs to capture the following additional articles for the reasons explained below: article 14 (access to works): This article provides the applicant with powers to carry out works to form and lay out such means of access or to improve existing means of access at any location within the order limits. Whilst approval is required from the relevant planning authority with consultation of the highway authority for such an access, approval of the highway authority is not required. NH must have control over the operations being carried out on its network and accesses from its high speed network. This is critical from a safety perspective and to maintain the integrity of the asset. Therefore, the applicant should be required to obtain NH's consent in the event an access is required to the SRN.

Paragraph	Heading	Justification
		article 17 (discharge of water): This article allows the applicant to use any watercourse, public sewer or drain for the drainage of water in connection with the authorised development. It is noted consent is required from the person to whom the watercourse, drain or sewer belongs however such consent is subject to deemed consent under article 47. article 20 (authority to survey and investigate land): This article allows the applicant to enter any land within the order limits effected by the authorised development or enter on any land upon which entry is required in order to carry out monitor or survey in respect of the authorised development and , carry out surveys or investigations, trial holes, bore holes, ecological or archaeological investigations and place leave or remove apparatus on land in this regard. Whilst it is noted consent is required from the highway authority at sub paragraph (4) for any trial holes, bore holes and trenches for land located within the highway boundary, consent is not required for the wider use of the powers granted within this article such as access to land for surveys etc. Consent is also not required for any land NH own that is outside of the highway boundary and the applicant is only required to serve notice on the landowner prior to exercising this right. This is also a right that extends beyond the order limits. article 24 (compulsory acquisition of rights): enables the undertaker to acquire rights or impose restrictive covenants over the Order Land as may be required for any purpose for which the land may be acquired under Article 21 (Compulsory acquisition of land). Paragraph (1) gives the Applicant the ability to take a lesser power of rights over land, rather than full acquisition. The Article also provides that rights may be created as well as enabling the undertaker to acquire those already in existence. It should be noted that this provision is subject to Article 31 (Temporary use of land for constructing the authorised development) which provides that the undertaker must not acquire, acquire new rights over or impose restrictive covenants over land listed in Schedule 11 to the Order (i.e. Land of which only temporary possession may be taken). NH must have control over powers being exercised over its network or land it controls. This is critical from a safety perspective and to maintain the integrity of its assets. Therefore, the applicant should be required to obtain NH's consent before exercising the powers under this article. article 27 (power to override easements and other rights): this article permits the Applicant to interfere with any right or interest NH may have within the order limits. As above NH must have control over powers being exercised over its network or land it controls. This is critical from a safety perspective and to maintain the integrity of its assets. Therefore, the applicant should be required to obtain NH's consent before exercising the powers under this article. article 29 (acquisition of subsoil only): This article permits the undertaker to acquire only the subsoil of land, or rights only in the subsoil of land, which may be compulsorily acquired (pursuant to Article 21 – Compulsory acquisition of land or Article 24 – Compulsory acquisition of rights). As above NH must have control over powers being exercised over its network or land it controls. This is critical from a safety perspective and to maintain the integrity of its assets. Therefore, the applicant should be required to obtain NH's consent before exercising the powers under this article.

Paragraph	Heading	Justification
		article 30 (rights under streets) This article provides the applicant with the power to enter and use the subsoil over any part of NH's network without NH's consent. NH would not permit uncontrolled works underneath its network which would originally have the protection of a section 50 pursuant to the New Roads and Street Works Act 1991. NH would need to give consideration to the safety implications of such work and its interface with NH's assets. NH would expect to have a consenting role before these powers are exercised over the SRN or land which it owns or controls. This is critical from a safety perspective and to maintain the integrity of NH's assets. Therefore, the applicant should be required to obtain NH's consent in the event that the exercise of the powers affect the SRN or any land National Highways has an interest in. The changes requested are consistent with other solar projects including the Green Hill Solar Farm DCO application
66(3) and (4)	Payments	As noted above the costs incurred by NH in the administration of the design approval process, the transfer of land, supervision of works, legal costs and VAT should be payable by the Applicant. But for the Applicant's scheme, NH would not have to expend resources on the cable or road works and those costs need to be met ahead of NH incurring the relevant costs. The dDCO includes provisions that would enable the Applicant to delay or refuse payment of NH's costs upfront where the Applicant decides that the costs sought by NH are unreasonable. As a public body, NH must act reasonably when incurring costs. NH does not have a budget for costs incurred in respect of the dDCO proposals and therefore needs costs to be met up front.
67	Provisional Certificate	Where any road or cable works are proposed to the SRN, on, over or under the highway, the requirements of NH's design checking and approval process is required to be discharged. Reference to NH inspecting "with all reasonable despatch" is uncertain. NH will carry out an inspection in line with its statutory duties and obligations under its licence to support third party development.
69	Opening	The number of days referenced in this paragraph should reflect NH's template provisions. The "unless otherwise agreed in writing by National Highways" allows for flexibility and NH must act reasonably in providing that approval.
73	Security	Where the Applicant is proposing to carry out works to the SRN and beneath the SRN or on land owned by NH, NH needs to approve the relevant works in accordance with certain protective provisions. These works may be commenced and not completed, may be constructed contrary to the approved design or may be suspended due to the dissolution of the Applicant. In such cases, NH is exposed to a potentially significant financial burden in removing the works from the highway estate. Outside the Planning Act 2008, payment for any works which an authority are authorised to execute (i.e. not just works to the highway itself) may be secured under a section 278 agreement, with such a payment being secured through a bond or cash deposit. In the absence of any commitment by the Applicant to enter into a section 278 agreement containing provisions to put security in place for the benefit of NH, the NH protective provisions require security in a manner which is

Paragraph	Heading	Justification
		consistent with the measures applying to developments carried out under the Town and Country Planning Act 1990, applying the provisions of the Highways Act 1980. The NH protective provisions are also an appropriate mechanism to secure security for any other costs or expenses incurred by NH in respect of the Applicant's exercise of any other powers under the Order.
70	Insurance	Insurance is required of all contractors working on the SRN and the amount of insurance needs to be in accordance with NH's template protective provisions if NH is to be held harmless for any costs incurred.
71	Indemnity	NH must be held harmless for the construction, maintenance and operation of the Authorised Development and any resultant impacts and it is common practice for statutory undertakers to be indemnified in such circumstances. It should not be for the public purse to cover instances of loss or damage occasioned by third party works.

4. LAND INTERESTS AND BOOK OF REFERENCE

2.5 The draft Order proposes the compulsory acquisition of interests over a total of 52 plots in which National Highways holds a land interest. The proposed powers fall into two categories: (a) the acquisition of **new rights over land and the imposition of restrictive covenants**, affecting **31 plots**; and (b) the **temporary possession** of land, affecting **21 plots**. No plots are identified for outright freehold acquisition.

2.6 The proposed powers relate principally to:-

- 2.6.1 Work No. 5 (electrical and communication cabling),
- 2.6.2 Work No. 7 (temporary construction and decommissioning laydown areas)
- 2.6.3 Work No. 8A (temporary construction, maintenance and decommissioning access).

New Rights/Imposition of Restrictive Covenants plots

2.7 The majority of the new rights plots are sought to facilitate Work Nos. 5 and 8A (electrical cabling and temporary access). A further 5 new rights plots are sought to facilitate either Work No. 5 alone or Work No. 8 alone.

2.8 The proposed new rights include rights to install, maintain, protect and remove underground cables and associated apparatus; rights of access on foot and with vehicles, plant and machinery; rights to alter, improve and maintain means of access including visibility splays and road widening; rights to install and maintain security fencing, gates and boundary treatment; rights to install and maintain drainage infrastructure; rights to implement landscaping and ecological mitigation measures; and restrictive covenants preventing the erection of buildings, alteration of ground levels or planting of trees that

may obstruct or interfere with the authorised development.

Temporary Possession Plots

- 2.9 The temporary possession powers are principally sought to facilitate Work No. 8A (temporary construction, maintenance and decommissioning access), with one plot (05-015) sought to facilitate Work No. 7 (temporary laydown areas).

Potential Claims and Existing Interests

- 2.10 National Highways notes that a number of the affected plots are subject to potential existing claims or interests which may be affected by the proposed acquisition or temporary possession. These include:
- 2.10.1 Plots 10-063, 10-065 and 10-067, in respect of which potential claims arise from rights to access the land to maintain the highway and, in the case of Plot 10-063, restrictive covenants and easements that may have been imposed prior to 18 September 2009.
 - 2.10.2 Plot 10-064, in respect of which a potential claim arises from rights and covenants granted by a Transfer dated 4 August 2006.
 - 2.10.3 Plots 10-071, 10-083 and 11-017, in respect of which potential claims arise from rights of access.
 - 2.10.4 Plots 20-014, 20-017, 20-019, 20-020 and 20-025, in respect of which potential claims arise from rights granted by Transfers dated 21 August 2006 (in relation to light and air) and 5 July 2004 (respectively).
 - 2.10.5 Plots 20-040 and 20-041, in respect of which potential claims arise from drainage rights.
- 2.11 NH requests a copy of the relevant documentation (Transfer etc) in relation to the above to assess the impact of the proposed exercise of compulsory acquisition powers over its existing land interests.
- 2.12 For each plot in each of the categories above, NH requires further details of the proposed works and requests consultation before works take place where there are potential traffic management implications.
- 2.13 Work is ongoing between NH and the Applicant to assess the impact for the purposed compulsory acquisition on a plot-by-plot basis. From NH's initial investigations, there are a significant number of plots where the relevant road has been detrunked and transferred to the Local Highway Authority (LHA). Where this is the position, NH no longer have any interest in these plots. Once those plots are confirmed, the information in relation to those plots can be updated in the Book of Reference to remove NH's listed interests. NH are also checking that none of the plots form part of a Side Roads Order. If plots are covered by a Side Road Order, then the Local Highway Authority is responsible, not NH. Accordingly, for these plots, provided works are not in subsoil, NH have no interest. If works are in the subsoil then agreement is required from NH. NH hopes to be able to confirm the position at the next deadline.
- 2.13.1 The Applicant should be required to obtain NH's consent before undertaking any activities affecting the SRN or any land in which NH has an interest. As a public body, NH it is under a duty to act reasonably in providing such consent, and this duty is expressly reflected in the proposed protective

provisions.

2.13.2 In addition, the Applicant is asked to confirm whether NH has any interest in any other plots beyond those listed.

5. STATEMENT OF COMMON GROUND

5.1 No Statement of Common Ground is currently being discussed with NH.

National Highways Limited
11 August 2026

Appendix
Amendments Required to Protective Provisions

PART 6

FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.,

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

(2) For any part of the strategic road network that is managed under a DBFO contract, both National Highways and the highway operations and maintenance contractor will have the benefit of this Part of this Schedule, save that for the purposes of any approval required under this Part the undertaker must liaise with National Highways.

(3) Except where expressly amended by the Order, the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or the Town and Country Planning (General Permitted Development) (England) Order 2015 shall continue to apply in respect of the exercise of all statutory functions of National Highways.

Interpretation

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

(2) In this Part of this Schedule—

"as built information" means one electronic copy of the following information where National Highways deems it to be necessary and insofar as it is relevant to the works impacting the strategic road network or any land in which National Highways holds an interest—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for any road work designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document, and for the cable works, showing the location and depth of the cable as installed and any ancillary or protective measures installed within the strategic road network or land that National Highways has an interest in;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) the health and safety file; and

(1) such other information, including CCTV surveys, as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's Asset Data Management Manual or any successor of it as is in operation at the relevant time;

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

"the bond sum" means the sum equal to 200% of the cost of carrying out the road works or the cable works or both (to include all costs plus any commuted sum), or such other sum agreed between the undertaker and National Highways, to be provided to National Highways in the form of—

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

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

"commuted sum" means such sum calculated as provided for in paragraph 74 of this Part of this Schedule to be used to fund the future cost of maintaining any new National Highways assets, structures or apparatus as part of the road works provided under the Order;

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

"condition survey" means a survey of the condition of National Highways structures and assets that in the reasonable opinion of National Highways may be affected by the road works or cable works which National Highways may require ~~includes~~ including a CCTV survey of specified drains that National Highways 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 and calculations as are relevant to—

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

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

(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 including any asbestos survey required by GG105 or any successor document;
- (iii) regime of California Bearing Ratio testing;
- (iv) any proposed departures from DMRB standards;
- (v) apparatus diversions;
- (vi) topographical survey;
- (vii) technical approval of highway structures under CG300 of DMRB; and
- (viii) other such information that may be required by National Highways to be used to inform the detailed design of the cable works;

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

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

"final certificate" means the certificate relating to those aspects of the road works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 72;

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

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

"nominated persons" means the undertaker's representatives or the contractor's representatives on site during the carrying out of the cable works or road works as notified to National Highways from time to time;

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

"provisional certificate" means the certificate of provisional completion relating to those aspects of the cable works or the road works or both that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 61 or 62 as appropriate when it considers the cable works or road works are substantially complete and, if relevant, may be opened for traffic;

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

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

"road space booking" means road space bookings in accordance with National Highways' Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy and "road space bookings shall be construed accordingly";

"road works" means so much of any work including highway works, street works, surveys and signalisation authorised by this Order and including any maintenance of that work, but excluding the cable works, as is undertaken on the strategic road network or land in which National Highways has an interest;

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

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

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

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

(3) Notwithstanding the grant of development consent in article 3-~~(development consent etc. granted by this Order)~~ of the Order, no works in carrying out, maintaining diverting or decommissioning the authorised development ~~must not~~ may be carried out in, under or over the strategic road network ~~without~~ unless those works are agreed with National Highways and the written consent of National Highways has been obtained pursuant to this Part of this Schedule.

(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.

Works outside the Order limits

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

Prior approvals

64.—(1) The road works must not commence, save to the extent agreed otherwise by National Highways, until—

- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;
- (b) the programme of works has been approved by National Highways;
- (c) the detailed design of the road works comprising the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under paragraph (a);
 - (ii) details of the proposed road space bookings and the undertaker is entitled to submit its application for road space bookings at the same time as the relevant details are submitted under sub-paragraph (i) to National Highways;
 - (iii) the identity and qualifications of the contractor and nominated persons; ~~and~~
 - (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker; and
 - (v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding or any successor document;
- (d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
- (e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under paragraph (c)(iv) above;
- (f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
- (g) the undertaker has agreed the estimate of the commuted sum with National Highways;
- (h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the ~~specified road~~ works (which must include winter maintenance) has been agreed in writing by National Highways;
- (i) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the road works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the road works, including in the selection of materials, goods, equipment and plant;
- (j) a condition survey and regime of monitoring has been agreed in writing by National Highways; and
- (k) any further information that National Highways may reasonably request within 14 days of the submission to National Highways 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 National Highways;

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

- (i) the detailed design information;
 - (ii) details of the proposed road space bookings and the undertaker is entitled to submit its application for road space bookings at the same time as the relevant details are submitted under sub-paragraph (i) [to National Highways](#);
 - (iii) a method statement including details of the cable works, equipment and 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 National Highways;
- (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 National Highways;
- (e) a condition survey and regime of monitoring has been agreed in writing by National Highways;
- (f) the CASS01 has been approved by National Highways; ~~and~~
- [\(g\) the undertaker has paid to National Highways the estimate of the National Highway's costs notified to it pursuant to paragraph 6 of this Part of this Schedule; and](#)
- [\(gh\)](#) any further information that National Highways may reasonably request within 14 days of the submission to National Highways of the detailed design of any cable works.

(3) ~~Save in an emergency, the~~ [The](#) undertaker must not, ~~without the consent of National Highways,~~ exercise the powers in—

- (a) article 5 (power to maintain the authorised development);
- (b) article 8 (street works);
- (c) article 10 (power to alter layout, etc., of streets);
- (d) article 12 (temporary ~~and permanent~~ closure, restriction or prohibition of use ~~or stopping up~~ of streets and public rights of way);
- [\(\) article 14 \(access to works\);](#)
- [\(ef\)](#) article 16 (traffic regulation measures);
- [\(g\) article 19 \(discharge of water\);](#)
- [\(fh\)](#) article 19 (protective works to buildings);
- [\(i\) article 20 \(authority to survey and investigate land\);](#)
- [\(gj\)](#) article 23 (compulsory acquisition of land);
- [\(k\) article 24 \(compulsory acquisition of rights\);](#)
- [\(hl\)](#) article 25 (private rights);
- [\(m\) article 27 \(power to override easements and other rights\);](#)
- [\(n\) article 29 \(acquisition of subsoil only\);](#)
- [\(o\) article 30 \(rights under streets\)](#)
- (ip) article 31 (temporary use of land for constructing the authorised development);
- (jq) article 32 (temporary use of land for maintaining the authorised development);
- (kr) article 40 (felling or lopping of trees and removal of hedgerows),

—

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

(4) National Highways 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 National Highways for consideration of the information required under sub-paragraph (1) and (2).

(5) Any approval of National Highways required under this paragraph—

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

(6) Any change to the identity of the contractor or designer of the road works or the cable works will be notified to National Highways 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 National Highways.

(7) Any change to the detailed design of the road works or cable works must be approved by National Highways in accordance with ~~paragraph~~sub-paragraph (1) ~~of this Part~~ and (2).

(8) Article 47 does not apply to any application for consent, agreement or approval required or contemplated by any of the provisions to this Part of this Schedule.

Construction of the cable works and road works

65.—(1) The undertaker must give National Highways ~~232~~ months' notice in writing of the date on which ~~any~~the cable works and/or road works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures when booking road space on the strategic road network prior to and during the carrying out the road works or cable works (as applicable) and no road works or cable works for which a road space booking is required may commence without a road space booking having first been secured from National Highways.

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

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 64(1) or 64(2) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 ("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 National Highways. ~~and no. No approval or consent given under this Part of this~~

~~Schedule will constitute~~ issued by National Highways shall be taken to be a consent or approval pursuant to the CDM Regulations ~~unless this is expressly stated within the consent or approval.~~

(4) The undertaker must ensure that, where ~~practicable~~ possible and without entering the ~~highway strategic road network~~, the ~~highway strategic road network~~ is kept free from mud, soil and litter as a result of carrying out a road work or cable work.

(5) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain 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 National Highways has an interest where access is affected by the cable works or road works or the exercise of the powers in this Order.

(6) 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 or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways.

(7) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(8) If, within 28 days 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 National Highways, a danger to road users, within such lesser period as National Highways may stipulate in the notice), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker by that notice and may recover from the undertaker any expenditure reasonably incurred by National Highways in so doing, such sum to be payable within 28 days of written demand.

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

(10) In constructing the 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~~ the strategic road network over existing utilities must be constructed to the satisfaction of National Highways.

(11) Until such time that National Highways issues the provisional certificate, the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 644(1)(h) and the undertaker must carry out such maintenance at its own cost.

(12) The undertaker must notify National Highways if it fails to complete the road works or cable works in accordance with the agreed programme pursuant to paragraph 644(1)(b) of this Part or suspends the carrying out of any road work or cable work beyond a reasonable period of time ~~14 days~~ and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

66.—(1) The undertaker must pay to National Highways a sum equal to the costs and expenses which National Highways reasonably and properly incurs (including costs and expenses for using

internal or external staff and costs relating to 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 64(1) and 64(2);
- (b) the supervision of the cable works and road works;
- (c) contractual costs properly payable to the highway operations and maintenance contractor as a consequence of any road works or cable works, including costs incurred by the highway operations and maintenance contractor in carrying out the tasks referred to in paragraphs (a) and (b), in which case National Highways will be responsible for the payment of any sums received from the undertaker under this paragraph to the highway operations and maintenance contractor;
- (d) the checking and approval of the information required to determine approvals under this Order;
- (e) all costs relating to the transfer of any land required for the road works or cable works;
- (f) all legal and administrative costs and disbursements incurred by National Highways in connection with the exercise by the undertaker of the powers in the Order and ~~paragraphs sub-paragraphs~~ (a) to (e) of this ~~sub-paragraph paragraph~~; and
- (g) any value added tax which is payable by National Highways in respect of such costs and expenses arising under this paragraph and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising "the NH costs".

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

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the cable works and road works. ~~Where the undertaker accepts that the estimate of NH costs is reasonable, and~~ the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the road works or cable works. ~~Where the undertaker does not accept that the estimate of costs is reasonable, escalation under sub-paragraph (7) will apply, and in any event prior to National Highways incurring any cost.~~

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate of the NH costs (the excess). ~~Where the undertaker accepts that the estimate of NH costs is reasonable and~~ the undertaker must pay to National Highways within 28 days of the date of receipt of a ~~properly issued VAT~~ an invoice from National Highways addressed to the undertaker for the excess sum, a sum equal to the excess. ~~Where the undertaker does not accept that the estimate of costs is reasonable, escalation under sub-paragraph (7) will apply.~~

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within ~~30~~ 91 days of the issue of the provisional certificate issued pursuant to paragraph 67(4) or 68(3) or, in any case where National Highways has confirmed in writing that no provisional certificate is required, within ~~30 days~~ 91 days of completion of the approved works.

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

- (a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it;

(b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

~~(0) Where the undertaker does not agree that an estimate provided by National Highways under this paragraph is reasonable, the undertaker must notify National Highways of that within 15 days of receiving the estimate. The undertaker and National Highways will escalate the estimate internally and will each nominate a senior officer to attend a discussion on the estimate. Where the parties fail to reach agreement following such discussion, any difference or dispute over reasonableness of any excess sum shall be determined by expert determination in accordance with paragraph 79.~~

~~(1) Save where otherwise agreed between the undertaker and National Highways or where alternative direction is made by expert determination in accordance with paragraph 79, if~~ (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.

Provisional Certificate for road works

67.—(1) Following the completion of any road works or prior to the reopening of any part of the strategic road network following any closure or partial closure, whichever is earlier, the undertaker must notify National Highways and National Highways will, ~~with all reasonable despatch,~~ carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways following the site inspection.

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

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

(a) inspect the road works; and

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

(4) When—

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

(c) 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 National Highways;

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

(e) the undertaker has paid the commuted sum to National Highways, National Highways must issue the provisional certificate.

(5) On the issue of the provisional certificate for the road works or the cable works, the bond sum will be reduced to 20% of the original amount of the bond sum, provided that in the event any claim or claims have been made against the undertaker or liability on its part has arisen under the bond sum (which here shall also include any claim or claims to which National Highways are joined howsoever they arise) before that date National Highways will be at liberty to retain a sufficient sum in addition to the 20% to ensure it does not have to meet any costs for and/or arising from and/or in connection with the specified works.

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

Provisional Certificate for cable works

68.—(1) As soon as the undertaker considers that the provisional certificate for the cable works may be properly issued it must apply to National Highways for the provisional certificate.

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

(a) inspect the cable works, the strategic road network, and any land in which National Highways 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 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 National Highways 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 National Highways and the as built information has been provided to National Highways, National Highways must issue the provisional certificate.

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

Opening

69. Unless otherwise agreed in writing by National Highways, the undertaker must notify National Highways not less than 4456 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 714 days of that date, and the undertaker must not open the strategic road network to the public prior to the expiration of the requisite notice period.

Final condition survey

70.—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 67(2) or 68(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 National Highways 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 strategic 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 National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted and such programme as National Highways may 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 National Highways, National Highways may carry out the steps required of the undertaker and may recover from the undertaker any expenditure it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to sub-paragraph (1) give notice in writing that National Highways will remedy

any damage identified in the re-surveys and National Highways may recover on demand from the undertaker any expenditure it reasonably incurs in so doing.

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

Defects Period

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

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

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

Final Certificate

72.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate for each of the cable works and road works.

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

- (a) inspect the strategic road network; and
- (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network 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 National Highways is satisfied that—

(a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph (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 National Highways; and

(b) the NH costs have been paid to National Highways in full,

National Highways 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 National Highways are joined howsoever they arise) National Highways will be at liberty to retain a sufficient sum to ensure it does not have to meet any costs for or arising from or in connection with the road works or cable works.

(6) The undertaker must pay to National Highways within 28 days of the date of receipt of a properly issued ~~VAT~~ invoice from National Highways addressed to the undertaker, the costs

~~reasonably~~ incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to this paragraph.

Security

73.—(1) The road works and cable works must not commence until the undertaker procures that the road works and cable works are secured by the bond sum to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and 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 National Highways is entitled upon giving notice to the undertaker to use such parts of the bond sum as National Highways considers necessary. For the avoidance of doubt should National Highways 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

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

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

Insurance

75. 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 ~~or series of claims arising from one event~~ 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 strategic road network by the undertaker.

Indemnity

76.—(1) The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from, or in connection to the construction, maintenance or use of the road works or ~~maintenance of the road works undertaken (but always excluding any consequential loss or indirect loss suffered by National Highways) before the issue of the final certificate for the relevant road works, or~~ any construction, maintenance or decommissioning of the cable works, or exercise of or failure to exercise any power under this Order and any such costs shall be paid to National Highways within 30 days of ~~an itemised demand subject to sub-paragraphs (2) to (5) a demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.~~

~~(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of~~

~~(a) — any damage to the extent that it is attributable to the neglect or default of National Highways, its officers, servants, contractors or agents;~~

~~(b) — any road works carried out by National Highways as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 36 (benefit of the Order).~~

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

~~(4) National Highways must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.~~

~~(5) National Highways must use its reasonable endeavours to mitigate and to minimise any costs, claims, expenses, damages, losses and to which the indemnity under this paragraph applies where it is within National Highways' reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties outside of National Highways' control and if reasonably requested to do so by the undertaker National Highways must provide an explanation of how the claim has been minimised, where relevant.~~

Maintenance of the authorised development

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

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

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

(4) The provisions of paragraph 699 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Land

78.—(1) Following the issue of the final certificate pursuant to paragraph 72(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but 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 National Highways.

(3) The undertaker must not exercise the powers of this Order over any land forming part of the strategic road network or land owned by National Highways, other than with the consent of National Highways (such consent not to be unreasonably withheld 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 National Highways; or
- (e) interfere with the apparatus of National Highways.

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

(5) Where any land or interest is proposed to be acquired pursuant to this Order for the benefit of National Highways, the undertaker must, unless otherwise agreed by National Highways, exercise article [] (compulsory acquisition of land) and article [] (compulsory acquisition of rights and imposition of restrictive covenants) as applied by articles [] (application of the 1981 Act) and article [] (modification of the 2017 Regulations) of this Order to directly vest in National Highways any such land or interest.

Expert Determination

79.—(1) Article 43~~44~~ (arbitration) of the Order does not apply to this Part of this Schedule.

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

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

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

(5) The expert must—

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

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

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

(g) 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 43~~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.