Deadline 5 Submission by National Highways Limited

Application by The Droves Solar Farm Limited for an Order granting Development Consent for the Droves Solar Project.

Planning Inspectorate Reference Number: EN0110013

Deadline 6 – NH Closing Submissions

---

1. INTRODUCTION

1.1 This document is submitted for Deadline 6 on behalf of National Highways ("NH") in respect of an application by The Droves Solar Farm Limited (the "Applicant") for an order granting development consent for The Droves Solar Project ("DCO"). The Applicant seeks development consent for proposed authorised development described in Schedule 1 of the draft DCO ("Authorised Development"). This document:-

(a) Confirms that subject to the execution and completion of a Side Agreement, Protective Provisions for the benefit of NH have been agreed between the Applicant and NH; and

(b) Sets out the matters outstanding between NH and the Applicant at the close of the examination, taking into account the Applicants Deadline 5 submissions **[REP5-077],** which relate to:-

(i) The temporary possession powers sought over NH's land at the A47/A1065 junction,

(ii) Requirement 3,

(iii) Requirement 5,

(iv) Requirements 15(3) and 20(5), and

(v) Paragraph 3 of Schedule 16.

1.2 In view of the brevity of this document, a summary has not been provided.

2. STATEMENT OF POSITION ON PROTECTIVE PROVISIONS

2.1 Subject to the execution and completion of a Side Agreement, the Protective Provisions have now been agreed between the Applicant and NH. A copy of the agreed Protective Provisions is appended to this submission at **Appendix 1**.

2.2 For the avoidance of doubt, and as set out in NH's Deadline 5 submission, the fact that NH has negotiated Protective Provisions with the Applicant does not in any way indicate that NH agrees that the DCO should grant the Applicant powers of temporary possession over NH's land. The Protective Provisions provide a back-up position only, should the ExA and/or the Secretary of State find against NH on that issue (see section 3 below).

3. MATTERS OUTSTANDING BETWEEN NH AND THE APPLICANT AT THE CLOSE OF THE EXAMINATION

3.1 The matters outstanding between NH and the Applicant relate to:-

(a) the temporary possession powers sought over NH's land at the A47/A1065 junction;

(b) Requirement 3;

(c) Requirement 5;

(d) Requirements 15(3) and 20(5) and references to "relevant highway authority"; and

(e) paragraph 3 of Schedule 16 (procedure for discharge of requirements).

Temporary possession of NH land

3.2 The Applicant seeks temporary rights over eight plots of land located at the A47 junction with the A1065 for which forms part of the SRN. NH objects to the temporary acquisition of all these plots as it would fetter its duties in respect of road safety. NH's position is as set out at CAH1 held on 9 September 2026 **[REP4-054]** and in its Deadline 5 submission **[REP5-087].**

3.3 The *only* interaction between the proposed development and the SRN relates to these plots, where temporary possession powers are sought, it is understood, solely to facilitate Abnormal Indivisible Load ("AIL") movements during construction. The Applicant has confirmed that these works are limited to temporary works, such as minor widening or reinforcement of kerbs or the removal of street furniture. All works in this location can be undertaken via NH's normal processes for permitting works of this type on the highway, including NH's established ESDAL procedures. NH does not object in principle to the Applicant obtaining access to the SRN utilising that approach.

3.4 NH does not take issue in principle with paragraph 26 of the Planning Act 2008: Guidance related to procedures for compulsory acquisition of land (2013), which provides that applicants should plan for compulsory acquisition as a contingency

while conducting negotiations. That guidance assumes that powers are needed if negotiations fail. It does not remove the need to justify the powers where an established alternative exists. Here, an alternative approach is clearly available to the Applicant. As previously stated, NH does not object to the Applicant obtaining access to the SRN for AIL movements during construction, through NH's standard processes or by entering into a section 278 agreement for the temporary works, both of which provide an appropriate alternative mechanism for securing the necessary access. Contrary to the Applicant's Deadline 5 response to NH's Deadline 4 submissions, there is therefore no reasonable prospect of the Scheme being impeded without the temporary possession powers.

3.5 Notwithstanding the above, the Applicant's submission on this point still does not address NH's point that the rights sought are neither necessary nor proportionate when an alternative approach is clearly available to the Applicant. A preference to rely on temporary possession rights, in case these are needed because the precise extent of works is not known until the detailed design stage, or to provide a back up plan, does not meet the necessary and proportionate test. The Applicant has not set out how the rights sought accord with the Government guidance.

3.6 As previously stated, the only direct interaction with the proposed scheme and the SRN relates to AIL's. With that in mind, as previously stated, the examples relied upon by the Applicant are not comparable:-

(a) London Luton Airport Expansion DCO did not involve temporary minor works and did not relate to AILs; it concerned access to NH land to construct permanent SRN mitigation works;

(b) in Lime Down Solar Project, the works affecting the SRN relate to a crossing of the M4 with an underground cable, being permanent works under the SRN;

(c) in Yorkshire Green Energy Enablement DCO, the works affecting the SRN all relate to access for permanent overhead line works; and

(d) in Light Valley Solar, NH's land interests are not yet clear and the examination is at an early stage.

3.7 Each example the Applicant has relied on involves permanent works on NH operational land. None involve solely temporary minor/maintenance-type works of unknown scope where an established alternative exists.

3.8 Suggesting that that temporary powers for AIL's have been sought in other applications, including Green Hill and Light Valley, does not establish that they are justified for this Scheme.

3.9 NH therefore maintains that the NH plots should be removed from the Book of Reference, the Order Limits and the DCO. If, contrary to NH's position, the plots are not removed from the Book of Reference and the Order Limits (so that no other powers in the DCO are exercisable under/over the NH plots) or powers over these plots remain in the DCO, NH requires the Protective Provisions referred to in section 2 to be included for its benefit. <u>For the</u>

avoidance of doubt, to the extent that any powers (land or otherwise) can be exercised over the SRN then NH must have its protective provisions included in the DCO.

Requirement 3: Amendments to approved documents

3.10 NH asks the Secretary of State to amend Requirement 3 so that it has an opportunity to review any amendments to approved documents or plans under Requirement 3, to ensure changes do not adversely impact the SRN or any land relevant to NH.

3.11 At ISH2, the Applicant acknowledged that Requirement 3 had remained an issue of disagreement on other projects promoted by the Applicant's parent company, and that the parties may ultimately agree to disagree. NH confirmed to the ExA that its concerns in relation to certain Requirements would remain notwithstanding the Protective Provisions.

3.12 NH notes that the Green Hill Solar Park DCO (EN010170) was made on 8 October 2026 and that, on this point, Requirement 3 was not changed. Notwithstanding that, NH's position remains that it is best placed to assess whether any amendment to an approved document, however seemingly minor, may impact the SRN. NH accepts, however, that it would not be proportionate for the Applicant to consult with NH on every change to a certified document.

3.13 To address this, NH proposes a minor amendment to Requirement 3 to secure that NH is consulted on amendments to certified documents, but only insofar as those amendments relate to the operation of the SRN or any land in which NH holds an interest. The following change (shown in red below) would address NH's concerns:

> *"The undertaker may submit any amendments to any approved document to the relevant planning authority for approval* (in consultation with National Highways where relevant, in the context of the operation of the Strategic Road Network or any of its interests in land)*, and, following approval, the relevant approved document is to be taken to include the amendments approved under this paragraph."*

Requirement 5:

3.14 NH asks the Secretary of State to amend Requirement 5 of the draft DCO. As drafted, Requirement 5 leaves approval of the details of the authorised development to the relevant planning authority alone. Those details include vehicular and pedestrian access, parking and circulation areas. The access points to the relevant Work Nos. may not be directly on the SRN. Even so, these arrangements will generate traffic that interacts with the SRN, particularly at junctions near the A47/A1065. Poorly designed arrangements could compromise the safety and free flow of traffic on the strategic network. Without National Highways' approval at the Requirement 5 stage, the relevant planning authority could approve details that are inconsistent with approvals granted under Article 14

(access to works), Article 15 (agreements with street authorities/adoption of works) or the detailed Construction Traffic Management Plan secured under Requirement 15. The Applicant says the relevant planning authority may consult any organisation it considers necessary. But a discretionary power to consult is not the same as a requirement for approval. Nothing guarantees that National Highways will be consulted on the specific details that affect highway safety and operation. Its concern is confined to details affecting the safety and operation of the SRN. National Highways has therefore narrowed its proposed wording as set out below.

*No part of *the authorised development* ~~Work Nos. 1, 2 or 3A~~ may commence until details of - (a) the layout; (b) scale; (c) proposed finished ground levels; (d) external appearance; (e) hard surfacing materials; and (f) vehicular and pedestrian access, parking and circulation areas, relating to that part have been submitted and approved by the relevant planning authority and where any details submitted could affect the safety or operation of the strategic road network, those details must not be approved by the relevant planning authority without the prior approval of National Highways, such approval not to be unreasonably withheld or delayed*

3.15 The Article 14, Article 15 and Requirement 15 processes stay with the local highway authority untouched. The only change is that, where any details submitted could affect the safety or operation of the strategic road network, the relevant planning authority must not approve them without National Highways' prior approval, such approval not to be unreasonably withheld or delayed.

3.16 The amendment is narrowly drawn and proportionate, and it ensures coherence across the DCO's approval framework. National Highways therefore invites the Examining Authority to recommend, and the Secretary of State to make, the amendment to Requirement 5 that it has proposed.

Requirements 15(3) and 20(5): Consultation with the relevant highway authority

3.17 Requirement 15(3) of Schedule 2 of the draft DCO **[APP/3.1.4]** provides that before approving the construction traffic management plan the relevant planning authority must consult with "the relevant highway authority". NH does not agree that this wording is sufficiently clear and requests that it is amended to refer to "relevant highway authority or authorities" to avoid any ambiguity. This change was agreed in relation to the recent East Park Energy DCO application and is explicit in the current Meridian Solar DCO drafting. The change has also been agreed in the East Pye Solar DCO which is currently under examination and being promoted by the same parent company as this Scheme. NH does not consider this change to be onerous or detrimental to the Applicant.

3.18 Requirement 20(5) provides that the Decommissioning Strategy will be agreed with the local planning authorities. NH requested Requirement 20 is amended to require that it is consulted upon the decommissioning strategy. It is noted that the latest version of the DCO has been updated to address NH's request. However, as set out above, reference to in consultation with "the relevant highway authority" is considered ambiguous and NH requests that it is amended to refer to "relevant highway authority or authorities" as per paragraph 3.17 above.

Schedule 16: Time periods for consultees

3.19 NH is grateful to the ExA for revising the time periods in paragraphs 3(2) and 3(3) of Schedule 16 in the schedule of proposed changes to the DCO published on 29 September 2026. However, the revised drafting still does not solve NH's issue. The time NH has to review an application depends on how much of its own time allowance the local authority uses; if the authority uses its full allowance, NH could have as little as 5 working days to review the application, prepare a response and make any request for further information. That is not enough time to review technical submissions of the kind expected under these requirements.

3.20 NH does not accept that receipt of a copy of the application under paragraph 2(1) of Schedule 16 provides adequate protection. Paragraph 2(1) gives NH no right to be consulted and no right to have its request passed on, and it does not stop the day-20 cut-off from running. This is particularly important where the consequence of missing the cut-off is the loss of the opportunity to obtain further information.

3.21 NH therefore requests that the drafting is amended so that:-

(a) NH has a guaranteed minimum period of 15 working days, running from the date it receives the formal consultation;

(b) the authority's determination period and the day-20 cut-off are extended to 25 working days to accommodate that period; and

(c) the authority is under an obligation to issue the consultation within 5 working days.

3.22 This would mean that, if the authority uses its full allowance at each stage, NH would still have 15 working days to decide whether further information is required.

APPENDIX 1: Agreed Protective Provisions

FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.,

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

(2) 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

2.—(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

(l) 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 and the cable works (to include all costs plus any commuted sum), or such other sum agreed between the undertaker and National Highways, to be provided to National Highways in the form of—

(a) a bond; or

(b) a cash surety; or

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

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

"commuted sum" means such sum calculated as provided for in paragraph 14 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;

"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 strategic road network to be issued by National Highways in accordance with paragraph 8 when it considers the cable works are substantially complete;

"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 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) where relevant, details of any hedgerows and trees that are required to be removed or anticipated to be impacted by the road works, details of any replacement hedgerows and trees and details of tree and hedgerow protective fencing;

(xxiii) 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;

(viii) where relevant, details of any hedgerows and trees that are required to be removed or anticipated to be impacted by the cable works, details of any replacement hedgerows and trees and details of tree and hedgerow protective fencing; and

(ix) 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 or the cable works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 12;

"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;

"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;

"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;

"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 strategic road network to be issued by National Highways in accordance with paragraph 7 when it considers the road works are substantially complete and, if relevant, may be opened for traffic;

"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;

"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 or diverting the authorised development may be carried out in, under or over the strategic road network without the written consent of National Highways 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

3. 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

4.—(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 sub-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;

(d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;

(e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph c(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 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) the detailed design of the cable works including information allowing National Highways to assess the impact of the detailed design on National Highways' assets and infrastructure including but not limited to existing drainage and gully assets, has been submitted and approved by National Highways;

(f) a condition survey and regime of monitoring has been agreed in writing by National Highways;

(g) the CASS01 has been approved by National Highways; and

(h) the undertaker has paid to National Highways the estimate of the NH costs notified to it pursuant to paragraph 6 of this Part of this Schedule;

(i) 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) 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 closure, restriction or prohibition of use of streets and public rights of way);

(e) article 14 (access to works);

(f) article 16 (traffic regulation measures);

(g) article 17 (discharge of water);

(h) article 19 (protective works to buildings);

(i) article 20 (authority to survey and investigate the land);

(j) article 21 (compulsory acquisition of land);

(k) article 24 (compulsory acquisition of rights);

(l) 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 or over streets);

(p) article 31 (temporary use of land for constructing the authorised development);

(q) article 32 (temporary use of land for maintaining the authorised development);

(r) article 33 (statutory undertakers);

(s) article 38 (application of landlord and tenant law);

(t) article 40 (felling or lopping of trees and removal of hedgerows);

(u) article 41 (trees subject to preservation orders),

over any part of the strategic road network or land in which National Highways has an interest, 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-paragraphs (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 sub-paragraphs (1) and (2).

(8) Article 47 (procedure in relation to certain approvals etc.) of this Order 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

5.—(1) The undertaker must give National Highways 3 months' notice in writing of the date on which 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 sub-paragraphs (1) or (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. No approval or consent issued by National Highways shall be taken to be a consent or approval pursuant to the CDM Regulations.

(4) 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.

(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-paragraphs (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 over existing utilities must be constructed to the satisfaction of National Highways.

(11) Until such time that National Highways issues the road works provisional certificate, the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 4(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 paragraphs 4(1)(b) and 4(2)(a) of this Part or suspends the carrying out of any road work or cable work beyond a reasonable period of time 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

6.—(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 5(1) and 5(2);

(b) the supervision of the cable works and road works;

(a) 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 sub-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;

(b) the checking and approval of the information required to determine approvals under this Order;

(c) all costs relating to the transfer of any land required for the road works or cable works;

(d) 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 sub-paragraphs (a) to (c) of this paragraph; and

(e) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising "the NH costs".

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

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

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

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of the issue of both the road works provisional certificate and the cable works provisional certificate issued pursuant to paragraphs 7(4) and 8(4) (as applicable).

(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.

(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

7.—(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 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 road works provisional certificate may be properly issued it must apply to National Highways for the road works provisional certificate.

(3) Following an application for a road works 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 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 National Highways;

(b) the road works incorporating the approved remedial works under sub-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;

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

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

National Highways must issue the road works provisional certificate.

(5) On the issue of the road works provisional certificate pursuant to this paragraph 7 and the cable works provisional certificate pursuant to paragraph 8 the bond sum shall be reduced to 20% provided that in the event any claim or claims have been made against the undertaker or liability on its part has arisen under the bond sum (which here shall also include any claim or claims to which National Highways are joined howsoever they arise) before that date National Highways will be at liberty to retain a sufficient sum in addition to the 20% to ensure it does not have to meet any costs for and/or arising from and/or in connection with the 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 National Highways.

Provisional Certificate for cable works

8.—(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 National Highways for the cable works provisional certificate.

(2) Following an application for a cable works 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 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 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 cable works 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

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

Final condition survey

10.—(1) The undertaker must, as soon as reasonably practicable after making its application for the road works provisional certificate pursuant to paragraph 7(2) and the cable works provisional certificate pursuant to paragraph 8(1), arrange for any highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to 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 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

11.—(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 or the cable 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 road works 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

12.—(1) The undertaker must apply to National Highways 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 (as applicable).

(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 for the road works and the cable works.

(5) The bond sum is released in full upon the issue of the final certificate for the road works and the cable works (as applicable), 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 invoice from National Highways addressed to the undertaker, the costs incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to this paragraph.

Security

13.—(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

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

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

Insurance

15. 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 strategic road network by the undertaker.

Indemnity

16. 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 and 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 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Maintenance of the authorised development

17.—(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 9 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Land

18.—(1) Following the issue of the final certificate pursuant to paragraph 12(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) For the avoidance of doubt, where the Undertaker exercises any power under article 33 (statutory undertakers) of the Order in respect of any part of the strategic road network or any land or apparatus in which National Highways has an interest, the provisions of this Part of this Schedule shall apply and take precedence to the extent they are relevant to the protection of National Highways' apparatus, interests and rights.

Expert Determination

19.—(1) Article 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;

(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 (arbitration).

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