

SEA LINK

EN020026

Comments on Part 5 of Schedule 15 of the draft DCO (Protective Provisions)

Suffolk County Council

Table Glossary of Acronyms

<i>DCO</i>	<i>Development Consent Order</i>
<i>dDCO</i>	<i>Draft Development Consent Order</i>
<i>ES</i>	<i>Environmental Statement</i>
<i>ExA</i>	<i>The Examining Authority</i>
<i>NSIP</i>	<i>Nationally Significant Infrastructure Project</i>
<i>PPs</i>	<i>Protective Provisions</i>

“The Council” / “SCC” refers to Suffolk County Council.

Purpose of this Submission

The document has been prepared by Suffolk County Council (SCC) to provide wording for protective provisions in the DCO for the Council in its capacity as local highway authority in response to the version proposed by the Applicant. The background and explanations behind the proposed amendments are provided before a tracked changes version (from page 8) and a clean version (from page 20) of SCC’s proposed wording for protective provisions.

Suffolk County Council's comments on the local highway authority protective provisions (Part 5 of Schedule 15) to the draft DCO

Background

On Friday 16 October 2026, the Applicant submitted their preferred form of local highway authority protective provisions (“PPs”) to the Secretary of State. These have not been agreed with SCC and SCC’s preferred form are attached in the Annex to this document. (Clean and tracked changed versions are attached). The attached form in the Annex show SCC’s amendments to the PPs the Applicant sent to SCC on 14 October 2026, and which SCC understand were submitted to the Secretary of State on 16 October.

Since the close of the Examination, SCC has sought, on several occasions, to meet with the Applicant to discuss these PPs. During that time, the Applicant has been able to only meet twice: on 15 September 2026 and then on 13 October 2026. SCC considers that if there had been another meeting, or if the meetings had been arranged earlier, each of the amendments set out below could have been agreed.

Amendments to the PPs

SCC has proposed major and minor amendments to the Applicant’s PPs. The amendments, and the reasons for them are set out in the two tables below. The first table sets out the major amendments; the second table sets out the minor ones. The minor amendments are mainly typographical in nature.

Major amendments to the PPs	
Paragraph	Amendment and reason
10(2) (inspection of highway works)	Replacement of “seventy two (72) hours’ notice” with “three working days’ notice” – by paragraph 10(2), where work is about to be covered up or put out of view, the undertaker must give the LHA “at least seventy two (72) hours’ notice” to allow the LHA to examine and measure any work which is to be covered up and examine foundations before placement is placed on it. If notice were given at (say) 5pm on a Friday evening, the 72 hours would elapse at 5pm the following Monday, which would effectively be 1 working days’ notice, which would make it challenging for an officer of the LHA to attend. If the Monday were a bank holiday, there is a risk no one would be able to attend. SCC has therefore relaced “seventy two (72) hours’ notice” with “three working days’ notice” which should allow enough time for an examination to take place.
Former para. 18 (payments and costs)	Deletion of paragraph 18 – as drafted, the Applicant’s paragraph 18 does not work. By paragraph 18(1), all funding and charging arrangements between the

	undertaker and LHA – save for those mentioned in paragraph 17(a), (b) and (f) – must be in accordance with certain principles. There is no explanation why the items mentioned in paragraph 17(a), (b) and (f) are excluded from the principles; however, SCC considers all items under paragraph 17 should be (and paragraph 18 removed) because the items listed in paragraph 17 are either subject to agreement between the parties or a transparent formula. (For instance, 17(f) refers to “the reasonable cost of any other road traffic orders required to facilitate the highway works” while 17(e) refers to “the reasonable cost of any temporary and permanent traffic regulation orders”. There is no reason why (e) should not fall within the exclusion under paragraph 18(1) if (f) is excluded. Similarly, (g) refers to the payment of VAT. Either VAT is payable or it is not; the principles under article 18(1) are irrelevant. Moreover, (h) refers to “commuted sums” which are calculated in accordance with a policy published on SCC’s website and with which the Applicant is already familiar. Again, the principles under article 18(1) are irrelevant. It will be remembered that SCC, like all local authorities, is rigorously audited and operates an “open book” policy in respect of its costs, charges etc. Moreover, by section 93(3) of the Local Government Act 2003, it cannot make a profit for its work. In the light of the above, paragraph 18 should be omitted from the PPs.
Current para. 18(4)(a) (security)	Paragraph 18(4) provides for the scenario where the undertaker is in default of its obligations under the PPs and allows the LHA to complete, maintain and repair works and to call upon the bond to cover their cost. Such works should be completed within a reasonable timeframe. The Applicant’s proposed sub-paragraph (4)(a) would slow the timeframe unreasonably by requiring the parties to follow the escalation procedure under paragraph 6 first. This would require the parties, in circumstances where the undertaker is already in default, to “use their reasonable endeavours to secure the amicable resolution” to this problem. Either party may then call upon their senior representatives to reach agreement to resolve the problem and if that cannot be achieved within 4 weeks,

	then the arbitration provisions in the draft Order “will automatically apply”. By article 62 (arbitration), the dispute must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State. There is no timeframe for the arbitration exercise under the draft Order, and it is possible that it could take several months (if not longer) to conclude. SCC considers this cannot have been the Applicant’s intention and that the recent inclusion of this provision – it was not included in the PPs included in the Deadline 7 version of the draft DCO [REP7-003] – has been made in error. SCC’s view is reinforced by the fact that sub-paragraph (4)(a) does not operate in isolation but after any arbitration, the (usual) steps in sub-paragraph (b) to (d) must still be followed (i.e. absent a danger to highway users, SCC would still have to give the undertaker 20 working days’ notice of its intention to carry out works, and a further “notice period” for carrying out any works). Matters must be addressed quicker than would be the case if sub-paragraph (4)(a) remained in the PPs. In the light of the above sub-paragraph (4)(a) should be omitted from the PPs.
--	--

Minor amendments to the PPs	
Paragraph	Amendment and reason
5(2)(a) (formal approval)	Replacement of “to” with “for” – made to correct typographical / grammatical error.
5(2)(d)(iv) (formal approval)	Replacement of “Details” with “details” – made to correct typographical error.
5(2)(d)(v) (formal approval)	Replacement of “Notices” with “notices” – made to correct typographical error.
5(2)(d)(viii) (formal approval)	Replacement of “paragraph [20]” with “paragraph [18]” – made to correct typographical error and account for the deletion of paragraph 18.

5(8) and 5(8)(b) (formal approval)	Deletion of “deemed consent” and “or deemed to have been issued” – made to correct typographical error because, following the inclusion of paragraph 6 (escalation of differences) there is no mechanism for deemed consent in the PPs. For example, paragraph 5(8) (formal approval) of the PPs included in the Deadline 7 draft DCO [REP7-003] stated if the LHA “has not approved or refused the submission made under sub-paragraph [(1)] above within the approval period, <u>it is deemed to have approved the details as submitted</u>”. [Emphasis added]. The corresponding provision in the Applicant’s latest PPs – paragraph 5(7) – states – “If the relevant highway authority has not approved or refused the submission made under sub-paragraph [(2)] above within the approval period, <u>the undertaker may refer the matter to the escalation procedure set out in paragraph [6]</u>”. The references to deemed consent in paragraphs 5(8) and 5(8)(b) are therefore erroneous and need to be removed.
6(1)(a) and (b) (escalation of differences)	Replacement of “The” with “the” and “If” with “if” – made to correct typographical errors.
11(2)(a) and (b) (opening up of the Highways Works)	Replacement of “Paragraph” with “paragraph” and “Formal” with “formal” – made to correct typographical errors.
12(2)(a) (site clearance and certificates of substantial completion)	Deletion of “and” – because it should be inserted at the end of sub-paragraph (2)(b).
12(2)(b) (site clearance and certificates of substantial completion)	Insertion of “and” – because “and” needs to be included at the end of sub-paragraph (2)(b) and not sub-paragraph (2)(a).
12(2)(c) (site clearance and certificates of substantial completion)	Replacement of “Notify” with “notify” – made to correct typographical error.

12(3)(a) (site clearance and certificates of substantial completion)	Replacement of “Inspect” with “inspect” – made to correct typographical error.
12(3)(b) (site clearance and certificates of substantial completion)	Replacement of “Provide” with “provide” – made to correct typographical error.
13(6) (temporary works period and certificate of reinstatement (temporary works only))	Replacement of “in” with “from” – made to correct typographical error / grammatical error.
14(4)(d) (defects correction period and certificate of final completion (permanent works only))	Replacement of “The” with “the” – made to correct typographical error.
14(4)(d) (defects correction period and certificate of final completion (permanent works only))	Inclusion of reference to “fees, payments and sums” – made for comprehensiveness. By paragraph 14(4), the LHA must issue to the undertaker the certificate of final completion once certain things have been done and one of these things is (per paragraph 14(4)(d)) the payment, by the undertaker, of “costs and expenses”. The items payable are listed in paragraph 17 and, in addition to “costs and expenses”, they include “fees, payments and sums”. For comprehensiveness, clarity and the avoidance of doubt, “fees, payments and sums” have been referred to in paragraph 14(4)(d).
20(1) (indemnity)	Replacement of “paragraph 17(i)” with “paragraph 17(h)” – made to correct typographical error.

Annex

Part 1 – Tracked changed version of the PPs

PART 5

FOR THE PROTECTION OF THE HIGHWAYS AUTHORITIES

Application

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

(2) Any approval, certificate or consent granted under this Part is separate from any approval the undertaker must obtain under requirement 12 (highway works) of Schedule 3 (requirements).

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 –

“1980 Act” means the Highways Act 1980;

“approval period” means, unless otherwise agreed between the parties (acting reasonably):

- (a) in respect of a request for approval for minor works or works required to be undertaken where there is an emergency, a period of 10 working days or less;
- (b) in respect of a request for approval for major works, a period of 25 working days; and
- (c) in respect of a request for approval which comprises both minor works and major works, a period of 25 working days,

“as-built information” means an electronic copy of the following information where relevant and reasonably necessary:

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker;
- (b) list of suppliers and materials used, as well as any relevant test results and surveys;
- (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) 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;
- (f) test results and records as required by the detailed design information and during construction phase of the project; and
- (g) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and the relevant highway authority.

“balancing payment” means a fee calculated pursuant to Paragraph 17, to be calculated and agreed separately with the relevant highway authority;

“CDM regulations” means the Construction (Design and Management) Regulations 2015;

“certificate of final completion” means any of the certificates referred to in Paragraph 14;

“certificate of reinstatement” means any of the certificates referred to in Paragraph 13;

“certificate of substantial completion” means any of the certificates referred to in Paragraph 12;

“extraordinary expense” means the cost of repairing damage to any highway to which an existing condition survey relates pursuant to Paragraph 7 and which the relevant highway authority consider is directly attributable to use of those highways by extraordinary traffic as a result of the authorised

development over and above the average cost of maintaining those highways.

“highway works” means the works, activities or operations listed in Schedules [5 to 9] and Schedule [13] of the Order, any other works, activities or operations (or any part thereof) that are required to be undertaken on, to, above, adjacent, near or under any part of the highway as shown on the accompanying plan for each part of the works and for which the consent of the relevant highway authority is required pursuant to the Order;

“major works” means highway works of a substantive nature including, but not limited to, the construction of new temporary or permanent accesses, the upgrading of existing accesses and/or the realignment of existing carriageway;

“minor works” means any highway works which are not Major Works including, but not limited to, the removal of street furniture, the erection of temporary signage, the erection of temporary scaffolding and/or the carrying out of vegetation pruning/trimming (or similar operations) in respect of an existing access arrangement;

“part” in relation to highway works means any component, element, section, phase, stage or portion of the highway works that is capable of being approved, carried out or completed separately from the remainder of the highway works;

“permit schemes” means the relevant highway authority’s permit scheme as made under the provisions of the Traffic Management Act 2004 and as in force at the date on which this Order is made, being the Traffic Management (Suffolk County Council) Permit Scheme Order 2020(c) or the Traffic Management (Kent County Council) Permit Scheme Order 2009 and the Kent County Council Permit Scheme Order 2015 (as applicable);

“road safety audits” means the evaluation of each and all of the highway works, in accordance with Standard GG 119 (Revision 2.01) of the Department for Transport’s Design Manual for Roads and Bridges or any superseding Standard, in order to identify potential road safety problems that may affect any users of the highway and to recommend measures to mitigate or remove those problems;

“security” means, in respect of the highway works (or part thereof), a bond from a credit provider approved by the relevant highway authority, and in a form approved in advance by the relevant highway authority, in favour of the relevant highway authority to cover the undertaker’s liability to that highway authority for an amount of not less than the estimated cost of the highway works (or part thereof), including costs associated with traffic management, plus 10%.

“substantial completion” means complete to the reasonable satisfaction of the relevant highway authority and so that the highway works in question can be used for the purpose and operate in the manner for which they were designed;

“temporary works period” means such period of time as is agreed between National Grid and the relevant highway authority within which any highway works of a temporary nature are permitted to remain in situ on the highway, in each case such period of time to begin immediately following Substantial Completion of those highway works;

General

3. The undertaker agrees to act towards the highway authorities and its appointed contractors and agents at all times in good faith and to co-operate, communicate and liaise with the relevant highway authority in relation to its obligations under this Part of this Schedule.

4. The undertaker shall be the only client for the purpose of the CDM regulations and agrees to undertake the obligations of a client under the CDM regulations and to use all reasonable endeavours to ensure that each part of the highway works is carried out in accordance with the CDM regulations.

Formal approval

5.—(1) Formal approval for design and implementation of highway works will only be provided to the undertaker who will be regarded as the client under the CDM regulations.

(2) The highway works must not commence until in respect of that part of the highway works:

(a) written approval ~~to~~for those highway works has been obtained from the relevant highway

authority (subject to the provisions of paragraph 5(7));

- (b) a programme for the delivery of works within the highway is provided by the undertaker to the highway authority at least 60 working days in advance of those works being commenced. This programme is to be reviewed periodically to reflect changes. For the avoidance of doubt, this programme can be provided prior to a decision on the Development Consent Order application.
- (c) as appropriate, the initial checking fee and balancing inspection payment, and the supervision fee, referred to in paragraph [17] in respect of that part of the highway works has been paid to the relevant highway authority;
- (d) the undertaker or its contractor has provided the relevant highway authority full details of the design of the highway works in question, such submission to include:
 - (i) detailed specifications, drawings and plans for those highway works, including confirmation as to which elements of those highway works are to be temporary or permanent in nature;
 - (ii) the name of the contractor appointed by the undertaker to undertake the highway works and, in respect of any major works, the details of a suitably qualified site engineer which has been appointed;
 - (iii) supporting documentation, including proposed traffic management measures, schedules of condition, and relevant road safety audits where necessary as defined by the Design Manual for Roads and Bridges guidance document GG 119 Road Safety Audit;
 - (iv) details of any proposed landscaping, planting and any boundary features which form part of the highway works or otherwise fall within the highway;
 - (v) notices in respect of any related temporary stopping-up orders or traffic regulation orders (or applications for the same where not otherwise listed in Schedules [7] and [13] respectively to the DCO);
 - (vi) evidence of all other consents and approvals necessary for those highway works to take place where relevant to the highway authority;
 - (vii) a breakdown of the reasonable estimate of the cost of those highway works, including the costs associated with traffic management, plus 10 (ten) per cent;
 - (viii) details of the Security proposed to be put in place in respect of those highway works in accordance with paragraph [2018] (Security);
 - (ix) if relevant, the intended duration of the temporary works period;
 - (x) any additional information required pursuant to the permit schemes;
 - (xi) any additional information reasonably requested by the relevant highway authority in line with the requirements of that highway authority's section 278 highway works procedure; and
 - (xii) information as relevant and reasonably required by the relevant highway authority to appropriately consider the proposed highway works including in relation to:
 - boundary, environmental and mitigation fencing;
 - road restraint systems;
 - drainage and ducting;
 - Earthworks;
 - road pavements, kerbs, footways and paved areas;
 - traffic signs, road markings, road lighting and electrical work;
 - highway structures;
 - utility diversions;
 - timings for the works (including dates and durations for any closures of any part of the local highway);
 - traffic management proposals (including any diversionary routes);
 - a schedule of condition of all local highway within the Order limits, and where local highway is occupied under this Order in connection with any works but is

not itself subject to highway works; and

- specification of the condition in which the local highway will be returned post occupation.

(3) Following the submission of information pursuant to sub-paragraph [(2)] of this paragraph, the relevant highway authority must review and determine the submission made, acting reasonably, to it under sub-paragraph [(2)] within the approval period.

(4) Where the relevant highway authority requests, acting reasonably, the provision of any additional information pursuant to sub-paragraph [(2)] of this paragraph, the undertaker must as soon as reasonably practicable:

- (a) use reasonable endeavours to address the concerns raised by the relevant highway authority and/or provide the additional information requested; or
- (b) notify the relevant highway authority that it disagrees with the need to comply with sub-paragraph [(3)] and intends to have recourse to the escalation process set out in paragraph [6] (Escalation of differences) of this Part of this Schedule below

PROVIDED THAT such request is made by the relevant highway authority within 10 working days of receipt of the information provided pursuant to sub-paragraph (2) of this paragraph.

(5) Where additional information has been reasonably requested by the relevant highway authority under sub-paragraph [(4)] above, the approval period shall be paused until such time as that additional information has been provided to it by the undertaker.

(6) In the event that the relevant highway authority refuses to grant approval, or any approval is issued subject to conditions which the undertaker in its sole discretion but acting reasonably at all times considers are unreasonable or would place it in conflict with its statutory duties and/or transmission licence obligations, the undertaker must notify the relevant highway authority in writing as soon as reasonably practicable that it intends to have recourse to the escalation process set out in paragraph 6 (Escalation of differences) of this Part of this Schedule.

(7) If the relevant highway authority has not approved or refused the submission made under sub-paragraph [(2)] above within the approval period, the undertaker may refer the matter to the escalation procedure set out in paragraph [6].

(8) All approval(s) issued pursuant to this paragraph (whether by agreement, ~~deemed consent~~ or otherwise through the escalation process set out in paragraph 6 (Escalation of differences) of this Part of this Schedule) will be recorded by the undertaker in an approvals register which will include, as a minimum:

- (a) a brief description of the highway works to which the approval relates;
- (b) the date on which approval was issued ~~or deemed to have been issued~~;
- (c) any unique reference number(s) assigned by the relevant highway authority to that approval;
- (d) the reference number(s) for all approved drawings, plans and other supporting information; and
- (e) any conditions or other information attaching, or relevant to, the approval in question;
- (f) the duration of the highways works to which the approval relates; and
- (g) Officer authorising approval of the design.

(9) Any highway works carried out within the administrative area of Kent County Council must be designed and constructed by the undertaker in accordance with the National Highways “Specification for Highway Works” (1998 Edition) as modified and extended by supplements published on behalf of National Highways and as modified by Kent County Council’s standard additional and supplementary provisions as at the date of submission of the designs for the relevant highway works as set out in this paragraph 5.

(10) Nothing in this Part of this Schedule prevents the undertaker from resubmitting any information previously submitted for the relevant highway authority’s approval under this paragraph [5] (with or without amendments) regardless of whether the relevant highway authority has approved or refused that previous submission. Following any such resubmission, the relevant highway authority must review and determine the resubmitted information in accordance with sub-paragraph (3) to (8).

Where the resubmitted information is not, in whole or in substantial part, new information, the relevant highway authority must respond as soon as reasonably practicable and in any event within the approval period PROVIDED THAT, in respect of matters that had previously been refused, if the relevant highway authority does not determine the submission within the approval period, it is deemed that approval is refused.

Escalation of differences

6.—(1) The parties shall use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them and, where requested by either party, the undertaker and the relevant highway authority shall assign and procure that their respective senior representatives meet to consider any such request and use all reasonable endeavours to reach agreement to resolve any dispute in accordance with the following provisions:

- (a) ~~The~~the senior representatives shall meet as soon as reasonably practicable in order to identify a means through which matters in dispute may be resolved; ~~and~~;
- (b) ~~If~~if the matter is not resolved at that level within twenty (20) Working Days of either party requesting such a meeting (or such longer period as may be agreed between the parties) then the provisions of article 62 (Arbitration) will automatically apply.

Extraordinary traffic

7.—(1) Prior to the commencement of any part of the highway works, or use of a construction route, the undertaker will:

- (a) agree with the relevant highway authority a methodology for the surveying of the condition of any existing public highways likely to be affected by that part of the highway works;
- (b) promptly undertake a survey of the condition of existing public highways in accordance with the agreed methodology; and
- (c) share the results of any such survey with the relevant highway authority.

(2) Following the carrying out of the corresponding part of the highway works, or final use of a construction route, the undertaker shall have due regard to any written/photographic evidence presented to it by the relevant highway authority of damage to any highway to which an existing condition survey relates pursuant to sub-paragraph (1) of this paragraph and which the relevant highway authority reasonably considers is directly attributable to use of those highways by extraordinary traffic as a result of the highway works, the repair of which will otherwise constitute an extraordinary expense.

(3) In such circumstances, the undertaker shall either carry out repair works in accordance with sub-paragraph (5) to the reasonable satisfaction of the relevant highway authority or reimburse the relevant highway authority for all or part of the amount of any expenses of repairing the highway, unless, acting reasonably, the undertaker determines neither they nor their agents or contractors caused the damage.

(4) In the event that the undertaker determines neither they nor their agents or contractors caused the damage, the relevant highway authority may refer the matter to the escalation procedure set out in paragraph 6.

(5) Nothing in this paragraph [7] (extraordinary traffic) will restrict the undertaker or its contractors from undertaking repairs to any part of the existing public highway affected by any part of the highway works at its own expense, and subject always to first obtaining the necessary approvals and permits from the relevant highway authority.

(6) This paragraph [7] is without prejudice to the highway authority's powers under Section 59 of the 1980 Act.

Conduct of the highways works

8.—(1) Each part of the highway works shall at all times be carried out in accordance with the approvals as recorded in the approvals register, this Order and the management plans therein and in accordance with all reasonable site-specific requirements of the relevant local highway authority (if any).

Testing of materials

9.—(1) Each relevant highway authority may require the testing of materials plant and workmanship used or proposed to be used in the highway works and shall have the power to reject any materials plant or workmanship so tested which each relevant highway authority may reasonably and properly find to be not in accordance with the approved information pursuant to paragraph [5] (formal approval) of this Part of this Schedule and recorded in the approvals register pursuant to paragraph [5] (formal approval) of this Part of this Schedule.

(2) The undertaker shall, as soon as is reasonably practicable, replace or repair any materials plant or workmanship which have been found to be not in accordance with the approved information pursuant to paragraph [5] (formal approval) of this Part of this Schedule and recorded in the approvals register pursuant to paragraph [5] (formal approval) of this Part of this Schedule.

(3) Subject at all times to provision of appropriate notice (when wishing to access land outside of the highway boundaries) and compliance with any overriding health and safety or similar obligations, any person or persons duly authorised by each highway authority shall be allowed reasonable access and admission to the highway works or the places where materials or plant for the highway works may be stored or in the course of preparation manufacture or use (unless such access or admission is refused due to circumstances beyond the control of the undertaker).

Inspection of the highways works

10.—(1) Subject at all times to provision of appropriate notice (when wishing to access land outside of the highway boundaries) and compliance with any overriding health and safety or similar obligations, the undertaker shall, during the progress of each and all of the highway works, give to or procure for any person or persons duly authorised by each highway authority supervised access to every part of the highway works and the site thereof and permit those person or persons to inspect the same as they proceed and all materials used or intended to be used therein and shall give effect to any reasonable and proper requirements made or reasonable and proper directions given in order to ensure conformity with the approved information pursuant to paragraph [5] (formal approval) of this Part of this Schedule and recorded in the approvals register pursuant to paragraph [5] (formal approval) of this Part of this Schedule.

(2) The undertaker shall not cover up or put out of view any works forming part of the Highway Works without the approval of the relevant highway authority and shall afford full opportunity for any person or persons duly authorised by the relevant highway authority to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon and shall give at least ~~seventy-two (72) hours~~ three working days notice to the relevant highway authority whenever any such work or foundations is or are ready or about to be ready for examination.

(3) Each relevant highway authority shall ensure that any person or persons duly authorised by it attend, without unreasonable delay, when required by the undertaker for the purpose of examining the highway works or of examining such foundations.

Opening up of the Highways Works

11.—(1) During the construction of each part of the highway works and prior to the issue of the certificate of substantial completion for that part of the highway works, the relevant highway authority may wish to open or expose any of the highway works which have been covered up without previously being inspected by the highway authority under paragraph [10] (Inspection of the highway works).

(2) Where sub-paragraph [(1)] of this paragraph applies, the relevant highway authority may so take up or expose the relevant part of the highway works causing as little damage or inconvenience as is possible in respect of any other part or parts of the highway works (and the undertaker shall be responsible for the reasonable and proper cost of such taking up or exposure and reinstatement) provided that if the highway works or any part or parts thereof are covered up by the undertaker after giving the notice referred to in paragraph [10] of this Part of this Schedule and the relevant highway authority have failed to inspect in the period therein referred to and the relevant highway authority shall subsequently require the highway works or any part of them to be uncovered for the purposes of inspection:—

- (a) if inspection reveals the relevant part or parts of the highway works to have been completed in accordance with the plans, drawings, specifications and other materials which have been approved pursuant to ~~Paragraph-paragraph~~ [5] (~~Formal-formal~~ approval) and recorded in the approvals register, all costs in respect of such uncovering and inspection and of reinstating the part or parts of the highway works uncovered shall be borne by the relevant highway authority; or
- (b) if inspection reveals the relevant part or parts of the highway works not to have been completed in accordance with the plans, drawings, specifications and other materials which have been approved pursuant to ~~Paragraph-paragraph~~ [5] (~~Formal-formal~~ approval-) and recorded in the approvals register all reasonable and proper costs in respect of uncovering and inspection and of reinstating the part or parts of the highway works uncovered shall be borne by the undertaker.

Site clearance and Certificates of Substantial Completion

12.—(1) The obligations in this paragraph [12] shall apply in respect of all highway works, irrespective of whether they are of a permanent or temporary nature.

(2) On substantial completion of each part of the highway works, the undertaker shall:

- (a) clear away and remove from the site of the highway works all construction plant and temporary works of every kind and leave the site of the highway works in a neat and tidy condition to the satisfaction of the relevant highway authority (the relevant highway authority being obliged to act reasonably); ~~and~~
- (b) as defined in GG 119, carry out stage 3 of the road safety audit process and comply to the satisfaction of the relevant highway authority (the relevant highway authority being obliged to act reasonably) with recommendations arising thereunder prior to the opening of the highway works to the public; ~~and-~~
- (c) ~~Notify-notify~~ the relevant highway authority of completion of the highway works or any part thereof and apply to the relevant highway authority for a certificate of substantial completion.

(3) Following an application for a certificate of substantial completion, the relevant highway authority shall as soon as reasonably practicable—

- (a) ~~Inspect-inspect~~ the highway works; and
- (b) ~~Provide-provide~~ the undertaker with a written list of any works that are reasonably required for the certificate of substantial completion to be issued or confirmation that no further works are required for this purpose.

(4) The undertaker shall carry out any works identified by the relevant highway authority (in accordance with sub paragraph (3)) within any reasonable timescales specified by the relevant highway authority and to the reasonable satisfaction of that highway authority.

(5) The provisions of sub paragraphs (3) and (4) then repeat themselves until the highway works, or relevant part(s) of them, have been completed to the reasonable satisfaction of the relevant highway authority.

(6) Upon substantial completion of each part of the highway works, including any additional work resulting from stage 3 of the road safety audit process, to the satisfaction in all respects of the relevant highway authority (the relevant highway authority being obliged to act reasonably), the relevant highway authority shall issue a certificate of substantial completion in respect of those highway works to the undertaker, provided that all costs and expenses owing to the relevant highway authority have been paid in respect of those highway works.

Temporary works period and certificate of reinstatement (temporary works only)

13.—(1) The obligations in this paragraph [13] shall apply only in respect of those highway works which are of a temporary nature.

(2) The undertaker shall be permitted to retain each part of the highway works in situ for the temporary works period (or such longer period as is agreed between the undertaker and the relevant highway authority) provided this does not exceed completion of the construction phase of the authorised

development.

(3) The undertaker shall maintain each part of the highway works in a condition satisfactory to the relevant highway authority for the temporary works period (the relevant highway authority being obliged to act reasonably).

(4) On the expiry of the temporary works period, the undertaker shall promptly clear away and remove from the site of the highway works all highway works of every kind (including construction plant and equipment) and reinstate the site of the highway works to the satisfaction of the relevant highway authority (the relevant highway authority being obliged to act reasonably).

(5) The relevant highway authority shall thereafter, and as soon as reasonably practicable, issue to the undertaker the ~~[certificate of reinstatement]~~ in respect of the relevant highway works.

(6) Notwithstanding the issue of a certificate of reinstatement, the undertaker shall remain responsible for the correction of any defects arising ~~in~~ from any reinstatement works or temporary works identified by the relevant highway authority within one calendar year of the certificate being issued, acting reasonably and having regard to the nature of the relevant works.

Defects correction period and certificate of final completion (permanent works only)

14.—(1) The obligations in this paragraph [14] shall apply only in respect of those highway works which are of a permanent nature.

(2) The undertaker shall maintain each part of the highway works for a period of:

- (a) in the case of minor works, twelve (12) months (unless the relevant highway authority agrees in writing a different period) from the issue of the related certificate of substantial completion; and
- (b) in the case of major works, eighteen (18) months (unless the relevant highway authority agrees in writing a different period) from the issue of the related certificate of substantial completion,

and prior to the expiration of the relevant period, the undertaker shall reinstate and make good any damage or defect which may have arisen from any cause whatsoever or be discovered during the said period (including any defect in or damage to any highway surface water drainage system) so as to place the highway and the relevant highway works in a condition satisfactory to the relevant highway authority (the highway authority being obliged to act reasonably).

(3) After the expiration of the period of twelve (12) months from the date of issue of the certificate of substantial completion, the undertaker shall (unless it is agreed between the parties that it is to be carried out sooner or that it is no longer required) carry out stage 4 of the road safety audit and comply to the satisfaction in all respects of the relevant highway authority (the highway authority being obliged to act reasonably) with any recommendations arising thereunder.

(4) After:

- (a) the expiration of the relevant period referred to in sub-paragraph (2) (or such other period as agreed in writing by the relevant highway authority under sub-paragraph (2)); and
- (b) any damage or defects or other maintenance works reasonably required by the relevant highway authority have been fully repaired / made good / completed to the reasonable satisfaction of the relevant highway authority, including any improvements arising under stage 4 of the road safety audit to the satisfaction of the relevant highway authority (the relevant highway authority being obliged to act reasonably); and
- (c) the undertaker has provided the relevant highway authority with a plan showing the land over which the highways works have been constructed, as-built information as reasonably required by the relevant highway authority and a health and safety file complying with the CDM regulations, including a separate health and safety file for each structure; and
- (d) ~~The~~ the undertaker has paid any costs, ~~and~~ expenses, fees, payments and sums due to the relevant highway authority under this Part of this Schedule,

the relevant highway authority shall as soon as reasonably practicable issue to the undertaker the certificate of final completion in respect of the relevant highway works, provided that the certificate of final completion shall in the case of road gullies extend only as far as their points of entry to the surface

water sewers where those are not being adopted by the highway authority as highway drains.

(5) Upon issue of a certificate of final completion:

- (a) any part of the highway works to which that certificate of final completion shall relate which is not already public highway shall, where the undertaker is the freehold owner of the land on which the works were carried out, be adopted by the relevant highway authority as part of the public highway; and
 - (b) the highway works so certified shall from then and at all times be maintainable at the public expense and the undertaker shall have no further liability under this Schedule in respect to the same.
- (6) The undertaker shall maintain the area of land on which the highway works have been carried out to the reasonable satisfaction of the relevant highway authority until the date of issue of the certificate of final completion.

Permit schemes

15. The undertaker agrees that the provisions in this Part of this Schedule operate in parallel to the permit schemes, each of which is given effect in article 12 (Application of the permit schemes) of this Order.

16. Unless otherwise agreed in writing by the relevant highway authority, in the event of a conflict with the provisions of this Part of this Schedule and either or both of the permit schemes, the terms of the permit scheme will prevail.

Payments and Costs

17. -(1)The undertaker must pay to the relevant highway authority—

- (a) where highway works (and any part of them) are being carried out within the administrative area of Kent County Council, a supervision fee of 10% of the estimated cost (for highway works valued up to £500,000 and 3% of any part of the estimated cost that is over £500,000) in relation to the highway works (or part thereof) for which formal approval is sought, such sum to be payable as follows:
 - (i) £2,000.00 to be paid to the relevant highway authority prior to the submission of an application for formal approval; and
 - (ii) any remaining balance to be paid to the relevant highway authority before the relevant part of the highway works commences.
- (b) where highway works (and any part of them) are being carried out outside of the administrative area of Kent County Council, an initial checking fee, to be calculated and agreed separately with the relevant highway authority, in relation to the highway works (or part thereof) for which formal approval is sought, such sum to be payable prior to the submission of an application for formal approval;
- (c) for any highway works outside the administrative area of Kent County Council, a balancing inspection payment, to be calculated and agreed separately with the relevant highway authority, such sum to be payable, if required, prior to commencement of the highway works (or part thereof) in question including recovery of additional costs for changes during the construction phase;
- (d) the reasonable costs incurred by the relevant highway authorities in monitoring the implementation of any recommendations arising from any road safety audits undertaken, such sum to be payable upon production of a valid invoice for the same;
- (e) the reasonable cost of any temporary and permanent traffic regulation orders, such sum to be payable prior to the commencement of any work on the making of such Order;
- (f) the reasonable cost of any other road traffic orders required to facilitate the highway works, such to be payable prior to the commencement of any work on the making of such Order;
- (g) any value added tax which is payable by the relevant highway authority in respect of such

payments referred to in this paragraph [17] and for which it cannot recover from HM Revenue and Customs;

- (h) any commuted sums in accordance with the relevant highway authority's standard commuted sums policy in place from time to time for the ongoing maintenance by the relevant highway authority of the infrastructure/items the commuted sum covers in respect of permanent works, such sums to be paid by the undertaker to the relevant highway authority before the relevant certificate of final completion is issued; and
- (i) any other costs reasonably and properly incurred by the relevant highway authority directly in relation to the carrying out of its obligations under this Part of this Schedule which are not otherwise specified in this paragraph 17 or otherwise agreed in writing between the parties.

~~18.—(1) Aside from paragraphs 17(a), (b) and (f), all funding and charging arrangements between the undertaker and the relevant highway authorities shall be in accordance with the following overarching principles:~~

~~1. the charging must relate exclusively to the relevant highway authority's recovery of its costs in respect of the highway works and more broadly for the provision of services it is authorised but not required (by an enactment) to provide;~~

~~2. where the services of the authorities maintenance contractor are required these will be charged at the rates within the authorities maintenance contract and subject to the conditions of the same;~~

~~3. charges are to be incurred on a not for profit basis (year by year) and, taking one year with another, the income from the charges for such services must not exceed the cost of providing them;~~

~~4. there shall be full transparency with regard to costs incurred; and~~

~~5. the relevant highway authority shall use reasonable endeavours to keep costs payable by the undertaker to a minimum including by, but not limited to, sharing resources between the highway authorities where relevant, avoiding unnecessary duplication of time and/or effort, and making the best use of available information.~~

~~6. If significant changes are made to the approved design during construction the highway authority reserves the right to recover any additional costs incurred.~~

~~—(2) All invoices submitted in connection with the costs and/or payments must comply with the principles set out in sub paragraph [(1)] and be accompanied by a written report summarising all tasks carried out or activities undertaken which have given rise to such costs and such other supporting information as is reasonable for the undertaker to request in the circumstances.~~

Security

~~19,18.~~ —(1) Prior to commencement of the highway works or part thereof, the undertaker shall provide the security.

(2) On the issue of a certificate of substantial completion, 75% of the security held in respect of the relevant highway works to which the certificate of substantial completion relates is automatically released, less any part(s) expended in accordance with the terms of this Schedule.

(3) On the issue of a certificate of final completion (or a certificate of reinstatement as appropriate), any remaining balance of the part of the security held in respect of the relevant highway works to which the certificate of final completion (or certificate of reinstatement as appropriate) relates is automatically released.

(4) Should the undertaker default in the execution of its obligations in carrying out, maintaining and/or repairing any or all of the relevant part of the highway works, then the relevant highway authority may itself complete, maintain and/or repair (as appropriate) that part of the highway works that has been commenced by the undertaker and maintain or remove and reinstate the same and call upon the undertaker to reimburse it for the cost expended in respect of the same, or require the provider of the security to deposit a sum of money with the relevant highway authority up to the amount of the total figure specified in the security, provided that:

~~(a) Where there is any dispute on whether the undertaker has defaulted, the dispute has first been settled in accordance with paragraph 6 (escalation of disputes) unless the relevant highway authority, acting reasonably at all times, considers there is a danger to the public or significant risk to the safe and efficient flow of traffic;~~

~~(b)~~(a) unless there is a danger to users of the highway, the relevant highway authority shall first give 20 working days prior written notice (or such lesser period as may in the circumstances be reasonable) of its intention to commence work under this sub-paragraph (4);

~~(c)~~(b) any notice served under this sub-paragraph (4)(~~ba~~) shall specify the period of the notice (“the notice period”), the extent of the work which the relevant highway authority proposes to carry out, and details of all matters in respect of which the relevant highway authority considers that the highway works have not been carried out in accordance with this Part of this Schedule; and

~~(d)~~(c) if before the expiry of the notice period, the undertaker serves written notice upon the relevant highway authority that it intends diligently to execute the works specified in the notice in accordance with this Part of this Schedule within the notice period (or such other period as the relevant highway authority may agree) the relevant highway authority shall not be entitled to execute the relevant part or parts of the highway works specified in the notice served under this paragraph unless the undertaker then fails to execute those works within the agreed timescale.

(5) Should the undertaker default on any of its obligations in this Part of this Schedule in respect of paying costs to the relevant highway authority or indemnifying the relevant highway authority (paragraphs 17 and 21), the relevant highway authority is entitled to draw down the relevant sum from the Security, provided that where there is any dispute on whether the undertaker has defaulted, the dispute has first been settled in accordance with paragraph 6 (escalation of disputes).

Insurance

~~20.19.~~ —(1) Prior to the commencement of the highway works the undertaker must have in place public liability insurance in the minimum sum of £10,000,000.00 (ten 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 highway works or use of the local road network by the undertaker and must maintain that insurance until the date of issue of the last certificate of final completion and must provide copies of that insurance to each local highway authority within 5 working days of a request being made.

Indemnity

~~21.20.~~ —(1) The undertaker shall, from the date of commencement of each part of the highway works indemnify the relevant highway authority against all claims, charges, costs, expenses, liability or losses whatsoever arising out of any or all of that part of the highway works (including claims made under Section 10 of the Compulsory Purchase Act 1965, Part I of the Land Compensation Act 1973 and any claims for compensation under the Noise Insulation Regulations 1975 (SI 1975/1763)) and shall at all times indemnify and keep indemnified the relevant highway authority for any claims or similar arising out of any breach or non-observance by the undertaker of its obligations in this Part of this Schedule, provided that the undertaker’s indemnity will not extend to any claims submitted to the relevant highway authority arising out of the negligence of the relevant highway authority’s employees or to the extent that such claims relate to the ongoing maintenance by the relevant highway authority of infrastructure or items for which commuted sums have been paid by the undertaker pursuant to Paragraph [17(~~hi~~)] after the issue of the relevant certificate of final completion (unless arising from any breach by the undertaker of its obligation(s) in this Part of this Schedule or from defective or negligent design or construction).

(2) The relevant highway authority shall:

- (a) notify the undertaker as soon as reasonably practicable upon becoming aware of any matter which becomes the subject of a claim for indemnity;
- (b) keep the undertaker reasonably informed of all progress of which it is, or becomes, aware of in connection with that matter and of any proposed settlement;
- (c) not settle or compromise that matter without the previous consent of the undertaker, such

consent not to be unreasonably withheld or delayed. Where the undertaker does not so consent it shall indemnify the relevant highway authority against all costs incurred by that highway authority in litigating that matter and will assist the highway authority in such litigation by providing such witnesses and other evidence as it is able to do in relation to any matter in contention.

(3) The indemnity in sub-paragraph (1) above includes:

- (a) all fees incurred by claimants which the relevant highway authority is obliged to pay, and those of the relevant highway authority or its agent or contractor, in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);
- (b) statutory interest payments to claimants and their professional advisors; and
- (c) the relevant highway authority's reasonable and proper legal and surveyor costs in making the compensation, fees and interest payments.

Part 2 – Clean changed version of the PPs

PART 5

FOR THE PROTECTION OF THE HIGHWAYS AUTHORITIES

Application

- 1.—(1) The provisions of this Part of this Schedule apply for the protection of the highway authority and have effect unless otherwise agreed in writing between the undertaker and the relevant highway authority.
- (2) Any approval, certificate or consent granted under this Part is separate from any approval the undertaker must obtain under requirement 12 (highway works) of Schedule 3 (requirements).

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 –

“1980 Act” means the Highways Act 1980;

“approval period” means, unless otherwise agreed between the parties (acting reasonably):

- (a) in respect of a request for approval for minor works or works required to be undertaken where there is an emergency, a period of 10 working days or less;
- (b) in respect of a request for approval for major works, a period of 25 working days; and
- (c) in respect of a request for approval which comprises both minor works and major works, a period of 25 working days,

“as-built information” means an electronic copy of the following information where relevant and reasonably necessary:

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker;
- (b) list of suppliers and materials used, as well as any relevant test results and surveys;
- (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) 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;
- (f) test results and records as required by the detailed design information and during construction phase of the project; and
- (g) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and the relevant highway authority.

“balancing payment” means a fee calculated pursuant to Paragraph 17, to be calculated and agreed separately with the relevant highway authority;

“CDM regulations” means the Construction (Design and Management) Regulations 2015;

“certificate of final completion” means any of the certificates referred to in Paragraph 14;

“certificate of reinstatement” means any of the certificates referred to in Paragraph 13;

“certificate of substantial completion” means any of the certificates referred to in Paragraph 12;

“extraordinary expense” means the cost of repairing damage to any highway to which an existing condition survey relates pursuant to Paragraph 7 and which the relevant highway authority consider is directly attributable to use of those highways by extraordinary traffic as a result of the authorised development over and above the average cost of maintaining those highways.

“highway works” means the works, activities or operations listed in Schedules [5 to 9] and Schedule [13] of the Order, any other works, activities or operations (or any part thereof) that are required to

be undertaken on, to, above, adjacent, near or under any part of the highway as shown on the accompanying plan for each part of the works and for which the consent of the relevant highway authority is required pursuant to the Order;

“major works” means highway works of a substantive nature including, but not limited to, the construction of new temporary or permanent accesses, the upgrading of existing accesses and/or the realignment of existing carriageway;

“minor works” means any highway works which are not Major Works including, but not limited to, the removal of street furniture, the erection of temporary signage, the erection of temporary scaffolding and/or the carrying out of vegetation pruning/trimming (or similar operations) in respect of an existing access arrangement;

“part” in relation to highway works means any component, element, section, phase, stage or portion of the highway works that is capable of being approved, carried out or completed separately from the remainder of the highway works;

“permit schemes” means the relevant highway authority’s permit scheme as made under the provisions of the Traffic Management Act 2004 and as in force at the date on which this Order is made, being the Traffic Management (Suffolk County Council) Permit Scheme Order 2020(c) or the Traffic Management (Kent County Council) Permit Scheme Order 2009 and the Kent County Council Permit Scheme Order 2015 (as applicable);

“road safety audits” means the evaluation of each and all of the highway works, in accordance with Standard GG 119 (Revision 2.01) of the Department for Transport’s Design Manual for Roads and Bridges or any superseding Standard, in order to identify potential road safety problems that may affect any users of the highway and to recommend measures to mitigate or remove those problems;

“security” means, in respect of the highway works (or part thereof), a bond from a credit provider approved by the relevant highway authority, and in a form approved in advance by the relevant highway authority, in favour of the relevant highway authority to cover the undertaker’s liability to that highway authority for an amount of not less than the estimated cost of the highway works (or part thereof), including costs associated with traffic management, plus 10%.

“substantial completion” means complete to the reasonable satisfaction of the relevant highway authority and so that the highway works in question can be used for the purpose and operate in the manner for which they were designed;

“temporary works period” means such period of time as is agreed between National Grid and the relevant highway authority within which any highway works of a temporary nature are permitted to remain in situ on the highway, in each case such period of time to begin immediately following Substantial Completion of those highway works;

General

3. The undertaker agrees to act towards the highway authorities and its appointed contractors and agents at all times in good faith and to co-operate, communicate and liaise with the relevant highway authority in relation to its obligations under this Part of this Schedule.

4. The undertaker shall be the only client for the purpose of the CDM regulations and agrees to undertake the obligations of a client under the CDM regulations and to use all reasonable endeavours to ensure that each part of the highway works is carried out in accordance with the CDM regulations.

Formal approval

5.—(1) Formal approval for design and implementation of highway works will only be provided to the undertaker who will be regarded as the client under the CDM regulations.

(2) The highway works must not commence until in respect of that part of the highway works:

- (a) written approval for those highway works has been obtained from the relevant highway authority (subject to the provisions of paragraph 5(7));
- (b) a programme for the delivery of works within the highway is provided by the undertaker to the highway authority at least 60 working days in advance of those works being commenced. This

programme is to be reviewed periodically to reflect changes. For the avoidance of doubt, this programme can be provided prior to a decision on the Development Consent Order application.

- (c) as appropriate, the initial checking fee and balancing inspection payment, and the supervision fee, referred to in paragraph [17] in respect of that part of the highway works has been paid to the relevant highway authority;
- (d) the undertaker or its contractor has provided the relevant highway authority full details of the design of the highway works in question, such submission to include:
 - (i) detailed specifications, drawings and plans for those highway works, including confirmation as to which elements of those highway works are to be temporary or permanent in nature;
 - (ii) the name of the contractor appointed by the undertaker to undertake the highway works and, in respect of any major works, the details of a suitably qualified site engineer which has been appointed;
 - (iii) supporting documentation, including proposed traffic management measures, schedules of condition, and relevant road safety audits where necessary as defined by the Design Manual for Roads and Bridges guidance document GG 119 Road Safety Audit;
 - (iv) details of any proposed landscaping, planting and any boundary features which form part of the highway works or otherwise fall within the highway;
 - (v) notices in respect of any related temporary stopping-up orders or traffic regulation orders (or applications for the same where not otherwise listed in Schedules [7] and [13] respectively to the DCO);
 - (vi) evidence of all other consents and approvals necessary for those highway works to take place where relevant to the highway authority;
 - (vii) a breakdown of the reasonable estimate of the cost of those highway works, including the costs associated with traffic management, plus 10 (ten) per cent;
 - (viii) details of the Security proposed to be put in place in respect of those highway works in accordance with paragraph [18] (Security);
 - (ix) if relevant, the intended duration of the temporary works period;
 - (x) any additional information required pursuant to the permit schemes;
 - (xi) any additional information reasonably requested by the relevant highway authority in line with the requirements of that highway authority's section 278 highway works procedure; and
 - (xii) information as relevant and reasonably required by the relevant highway authority to appropriately consider the proposed highway works including in relation to:
 - boundary, environmental and mitigation fencing;
 - road restraint systems;
 - drainage and ducting;
 - Earthworks;
 - road pavements, kerbs, footways and paved areas;
 - traffic signs, road markings, road lighting and electrical work;
 - highway structures;
 - utility diversions;
 - timings for the works (including dates and durations for any closures of any part of the local highway);
 - traffic management proposals (including any diversionary routes);
 - a schedule of condition of all local highway within the Order limits, and where local highway is occupied under this Order in connection with any works but is not itself subject to highway works; and
 - specification of the condition in which the local highway will be returned post occupation.

(3) Following the submission of information pursuant to sub-paragraph [(2)] of this paragraph, the relevant highway authority must review and determine the submission made, acting reasonably, to it under sub-paragraph [(2)] within the approval period.

(4) Where the relevant highway authority requests, acting reasonably, the provision of any additional information pursuant to sub-paragraph [(2)] of this paragraph, the undertaker must as soon as reasonably practicable:

- (a) use reasonable endeavours to address the concerns raised by the relevant highway authority and/or provide the additional information requested; or
- (b) notify the relevant highway authority that it disagrees with the need to comply with sub-paragraph [(3)] and intends to have recourse to the escalation process set out in paragraph [6] (Escalation of differences) of this Part of this Schedule below

PROVIDED THAT such request is made by the relevant highway authority within 10 working days of receipt of the information provided pursuant to sub-paragraph (2) of this paragraph.

(5) Where additional information has been reasonably requested by the relevant highway authority under sub-paragraph [(4)] above, the approval period shall be paused until such time as that additional information has been provided to it by the undertaker.

(6) In the event that the relevant highway authority refuses to grant approval, or any approval is issued subject to conditions which the undertaker in its sole discretion but acting reasonably at all times considers are unreasonable or would place it in conflict with its statutory duties and/or transmission licence obligations, the undertaker must notify the relevant highway authority in writing as soon as reasonably practicable that it intends to have recourse to the escalation process set out in paragraph 6 (Escalation of differences) of this Part of this Schedule.

(7) If the relevant highway authority has not approved or refused the submission made under sub-paragraph [(2)] above within the approval period, the undertaker may refer the matter to the escalation procedure set out in paragraph [6].

(8) All approval(s) issued pursuant to this paragraph (whether by agreement, or otherwise through the escalation process set out in paragraph 6 (Escalation of differences) of this Part of this Schedule) will be recorded by the undertaker in an approvals register which will include, as a minimum:

- (a) a brief description of the highway works to which the approval relates;
- (b) the date on which approval was issued;
- (c) any unique reference number(s) assigned by the relevant highway authority to that approval;
- (d) the reference number(s) for all approved drawings, plans and other supporting information; and
- (e) any conditions or other information attaching, or relevant to, the approval in question;
- (f) the duration of the highways works to which the approval relates; and
- (g) Officer authorising approval of the design.

(9) Any highway works carried out within the administrative area of Kent County Council must be designed and constructed by the undertaker in accordance with the National Highways “Specification for Highway Works” (1998 Edition) as modified and extended by supplements published on behalf of National Highways and as modified by Kent County Council’s standard additional and supplementary provisions as at the date of submission of the designs for the relevant highway works as set out in this paragraph 5.

(10) Nothing in this Part of this Schedule prevents the undertaker from resubmitting any information previously submitted for the relevant highway authority’s approval under this paragraph [5] (with or without amendments) regardless of whether the relevant highway authority has approved or refused that previous submission. Following any such resubmission, the relevant highway authority must review and determine the resubmitted information in accordance with sub-paragraph (3) to (8). Where the resubmitted information is not, in whole or in substantial part, new information, the relevant highway authority must respond as soon as reasonably practicable and in any event within the approval period PROVIDED THAT, in respect of matters that had previously been refused, if the

relevant highway authority does not determine the submission within the approval period, it is deemed that approval is refused.

Escalation of differences

6.—(1) The parties shall use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them and, where requested by either party, the undertaker and the relevant highway authority shall assign and procure that their respective senior representatives meet to consider any such request and use all reasonable endeavours to reach agreement to resolve any dispute in accordance with the following provisions:

- (a) the senior representatives shall meet as soon as reasonably practicable in order to identify a means through which matters in dispute may be resolved; and
- (b) if the matter is not resolved at that level within twenty (20) Working Days of either party requesting such a meeting (or such longer period as may be agreed between the parties) then the provisions of article 62 (Arbitration) will automatically apply.

Extraordinary traffic

7.—(1) Prior to the commencement of any part of the highway works, or use of a construction route, the undertaker will:

- (a) agree with the relevant highway authority a methodology for the surveying of the condition of any existing public highways likely to be affected by that part of the highway works;
- (b) promptly undertake a survey of the condition of existing public highways in accordance with the agreed methodology; and
- (c) share the results of any such survey with the relevant highway authority.

(2) Following the carrying out of the corresponding part of the highway works, or final use of a construction route, the undertaker shall have due regard to any written/photographic evidence presented to it by the relevant highway authority of damage to any highway to which an existing condition survey relates pursuant to sub-paragraph (1) of this paragraph and which the relevant highway authority reasonably considers is directly attributable to use of those highways by extraordinary traffic as a result of the highway works, the repair of which will otherwise constitute an extraordinary expense.

(3) In such circumstances, the undertaker shall either carry out repair works in accordance with sub-paragraph (5) to the reasonable satisfaction of the relevant highway authority or reimburse the relevant highway authority for all or part of the amount of any expenses of repairing the highway, unless, acting reasonably, the undertaker determines neither they nor their agents or contractors caused the damage.

(4) In the event that the undertaker determines neither they nor their agents or contractors caused the damage, the relevant highway authority may refer the matter to the escalation procedure set out in paragraph 6.

(5) Nothing in this paragraph [7] (extraordinary traffic) will restrict the undertaker or its contractors from undertaking repairs to any part of the existing public highway affected by any part of the highway works at its own expense, and subject always to first obtaining the necessary approvals and permits from the relevant highway authority.

(6) This paragraph [7] is without prejudice to the highway authority's powers under Section 59 of the 1980 Act.

Conduct of the highways works

8.—(1) Each part of the highway works shall at all times be carried out in accordance with the approvals as recorded in the approvals register, this Order and the management plans therein and in accordance with all reasonable site-specific requirements of the relevant local highway authority (if any).

Testing of materials

9.—(1) Each relevant highway authority may require the testing of materials plant and workmanship

used or proposed to be used in the highway works and shall have the power to reject any materials plant or workmanship so tested which each relevant highway authority may reasonably and properly find to be not in accordance with the approved information pursuant to paragraph [5] (formal approval) of this Part of this Schedule and recorded in the approvals register pursuant to paragraph [5] (formal approval) of this Part of this Schedule.

- (2) The undertaker shall, as soon as is reasonably practicable, replace or repair any materials plant or workmanship which have been found to be not in accordance with the approved information pursuant to paragraph [5] (formal approval) of this Part of this Schedule and recorded in the approvals register pursuant to paragraph [5] (formal approval) of this Part of this Schedule.

(3) Subject at all times to provision of appropriate notice (when wishing to access land outside of the highway boundaries) and compliance with any overriding health and safety or similar obligations, any person or persons duly authorised by each highway authority shall be allowed reasonable access and admission to the highway works or the places where materials or plant for the highway works may be stored or in the course of preparation manufacture or use (unless such access or admission is refused due to circumstances beyond the control of the undertaker).

Inspection of the highways works

10.—(1) Subject at all times to provision of appropriate notice (when wishing to access land outside of the highway boundaries) and compliance with any overriding health and safety or similar obligations, the undertaker shall, during the progress of each and all of the highway works, give to or procure for any person or persons duly authorised by each highway authority supervised access to every part of the highway works and the site thereof and permit those person or persons to inspect the same as they proceed and all materials used or intended to be used therein and shall give effect to any reasonable and proper requirements made or reasonable and proper directions given in order to ensure conformity with the approved information pursuant to paragraph [5] (formal approval) of this Part of this Schedule and recorded in the approvals register pursuant to paragraph [5] (formal approval) of this Part of this Schedule.

- (2) The undertaker shall not cover up or put out of view any works forming part of the Highway Works without the approval of the relevant highway authority and shall afford full opportunity for any person or persons duly authorised by the relevant highway authority to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon and shall give at least three working days' notice to the relevant highway authority whenever any such work or foundations is or are ready or about to be ready for examination.

(3) Each relevant highway authority shall ensure that any person or persons duly authorised by it attend, without unreasonable delay, when required by the undertaker for the purpose of examining the highway works or of examining such foundations.

Opening up of the Highways Works

11.—(1) During the construction of each part of the highway works and prior to the issue of the certificate of substantial completion for that part of the highway works, the relevant highway authority may wish to open or expose any of the highway works which have been covered up without previously being inspected by the highway authority under paragraph [10] (Inspection of the highway works).

(2) Where sub-paragraph [(1)] of this paragraph applies, the relevant highway authority may so take up or expose the relevant part of the highway works causing as little damage or inconvenience as is possible in respect of any other part or parts of the highway works (and the undertaker shall be responsible for the reasonable and proper cost of such taking up or exposure and reinstatement) provided that if the highway works or any part or parts thereof are covered up by the undertaker after giving the notice referred to in paragraph [10] of this Part of this Schedule and the relevant highway authority have failed to inspect in the period therein referred to and the relevant highway authority shall subsequently require the highway works or any part of them to be uncovered for the purposes of inspection:—

- (a) if inspection reveals the relevant part or parts of the highway works to have been completed in accordance with the plans, drawings, specifications and other materials which have been approved pursuant to paragraph [5] (formal approval) and recorded in the approvals register, all

costs in respect of such uncovering and inspection and of reinstating the part or parts of the highway works uncovered shall be borne by the relevant highway authority; or

- (b) if inspection reveals the relevant part or parts of the highway works not to have been completed in accordance with the plans, drawings, specifications and other materials which have been approved pursuant to paragraph [5] (formal approval) and recorded in the approvals register all reasonable and proper costs in respect of uncovering and inspection and of reinstating the part or parts of the highway works uncovered shall be borne by the undertaker.

Site clearance and Certificates of Substantial Completion

12.—(1) The obligations in this paragraph [12] shall apply in respect of all highway works, irrespective of whether they are of a permanent or temporary nature.

(2) On substantial completion of each part of the highway works, the undertaker shall:

- (a) clear away and remove from the site of the highway works all construction plant and temporary works of every kind and leave the site of the highway works in a neat and tidy condition to the satisfaction of the relevant highway authority (the relevant highway authority being obliged to act reasonably);
- (b) as defined in GG 119, carry out stage 3 of the road safety audit process and comply to the satisfaction of the relevant highway authority (the relevant highway authority being obliged to act reasonably) with recommendations arising thereunder prior to the opening of the highway works to the public; and
- (c) notify the relevant highway authority of completion of the highway works or any part thereof and apply to the relevant highway authority for a certificate of substantial completion.

(3) Following an application for a certificate of substantial completion, the relevant highway authority shall as soon as reasonably practicable—

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

(4) The undertaker shall carry out any works identified by the relevant highway authority (in accordance with sub paragraph (3)) within any reasonable timescales specified by the relevant highway authority and to the reasonable satisfaction of that highway authority.

(5) The provisions of sub paragraphs (3) and (4) then repeat themselves until the highway works, or relevant part(s) of them, have been completed to the reasonable satisfaction of the relevant highway authority.

(6) Upon substantial completion of each part of the highway works, including any additional work resulting from stage 3 of the road safety audit process, to the satisfaction in all respects of the relevant highway authority (the relevant highway authority being obliged to act reasonably), the relevant highway authority shall issue a certificate of substantial completion in respect of those highway works to the undertaker, provided that all costs and expenses owing to the relevant highway authority have been paid in respect of those highway works.

Temporary works period and certificate of reinstatement (temporary works only)

13.—(1) The obligations in this paragraph [13] shall apply only in respect of those highway works which are of a temporary nature.

(2) The undertaker shall be permitted to retain each part of the highway works in situ for the temporary works period (or such longer period as is agreed between the undertaker and the relevant highway authority) provided this does not exceed completion of the construction phase of the authorised development.

(3) The undertaker shall maintain each part of the highway works in a condition satisfactory to the relevant highway authority for the temporary works period (the relevant highway authority being obliged to act reasonably).

(4) On the expiry of the temporary works period, the undertaker shall promptly clear away and remove

from the site of the highway works all highway works of every kind (including construction plant and equipment) and reinstate the site of the highway works to the satisfaction of the relevant highway authority (the relevant highway authority being obliged to act reasonably).

(5) The relevant highway authority shall thereafter, and as soon as reasonably practicable, issue to the undertaker the certificate of reinstatement in respect of the relevant highway works.

- (6) Notwithstanding the issue of a certificate of reinstatement, the undertaker shall remain responsible for the correction of any defects arising from any reinstatement works or temporary works identified by the relevant highway authority within one calendar year of the certificate being issued, acting reasonably and having regard to the nature of the relevant works.

Defects correction period and certificate of final completion (permanent works only)

14.—(1) The obligations in this paragraph [14] shall apply only in respect of those highway works which are of a permanent nature.

(2) The undertaker shall maintain each part of the highway works for a period of:

- (a) in the case of minor works, twelve (12) months (unless the relevant highway authority agrees in writing a different period) from the issue of the related certificate of substantial completion; and
- (b) in the case of major works, eighteen (18) months (unless the relevant highway authority agrees in writing a different period) from the issue of the related certificate of substantial completion,

and prior to the expiration of the relevant period, the undertaker shall reinstate and make good any damage or defect which may have arisen from any cause whatsoever or be discovered during the said period (including any defect in or damage to any highway surface water drainage system) so as to place the highway and the relevant highway works in a condition satisfactory to the relevant highway authority (the highway authority being obliged to act reasonably).

(3) After the expiration of the period of twelve (12) months from the date of issue of the certificate of substantial completion, the undertaker shall (unless it is agreed between the parties that it is to be carried out sooner or that it is no longer required) carry out stage 4 of the road safety audit and comply to the satisfaction in all respects of the relevant highway authority (the highway authority being obliged to act reasonably) with any recommendations arising thereunder.

(4) After:

- (a) the expiration of the relevant period referred to in sub-paragraph (2) (or such other period as agreed in writing by the relevant highway authority under sub-paragraph (2)); and
- (b) any damage or defects or other maintenance works reasonably required by the relevant highway authority have been fully repaired / made good / completed to the reasonable satisfaction of the relevant highway authority, including any improvements arising under stage 4 of the road safety audit to the satisfaction of the relevant highway authority (the relevant highway authority being obliged to act reasonably); and
- (c) the undertaker has provided the relevant highway authority with a plan showing the land over which the highways works have been constructed, as-built information as reasonably required by the relevant highway authority and a health and safety file complying with the CDM regulations, including a separate health and safety file for each structure; and
- (d) the undertaker has paid any costs, expenses, fees, payments and sums due to the relevant highway authority under this Part of this Schedule,

the relevant highway authority shall as soon as reasonably practicable issue to the undertaker the certificate of final completion in respect of the relevant highway works, provided that the certificate of final completion shall in the case of road gullies extend only as far as their points of entry to the surface water sewers where those are not being adopted by the highway authority as highway drains.

(5) Upon issue of a certificate of final completion:

- (a) any part of the highway works to which that certificate of final completion shall relate which is not already public highway shall, where the undertaker is the freehold owner of the land on which the works were carried out, be adopted by the relevant highway authority as part of the

- public highway; and
- (b) the highway works so certified shall from then and at all times be maintainable at the public expense and the undertaker shall have no further liability under this Schedule in respect to the same.
- (6) The undertaker shall maintain the area of land on which the highway works have been carried out to the reasonable satisfaction of the relevant highway authority until the date of issue of the certificate of final completion.

Permit schemes

15. The undertaker agrees that the provisions in this Part of this Schedule operate in parallel to the permit schemes, each of which is given effect in article 12 (Application of the permit schemes) of this Order.

16. Unless otherwise agreed in writing by the relevant highway authority, in the event of a conflict with the provisions of this Part of this Schedule and either or both of the permit schemes, the terms of the permit scheme will prevail.

Payments and Costs

17. -(1)The undertaker must pay to the relevant highway authority—
- (a) where highway works (and any part of them) are being carried out within the administrative area of Kent County Council, a supervision fee of 10% of the estimated cost (for highway works valued up to £500,000 and 3% of any part of the estimated cost that is over £500,000) in relation to the highway works (or part thereof) for which formal approval is sought, such sum to be payable as follows:
 - (iii) £2,000.00 to be paid to the relevant highway authority prior to the submission of an application for formal approval; and
 - (iv) any remaining balance to be paid to the relevant highway authority before the relevant part of the highway works commences.
 - (b) where highway works (and any part of them) are being carried out outside of the administrative area of Kent County Council, an initial checking fee, to be calculated and agreed separately with the relevant highway authority, in relation to the highway works (or part thereof) for which formal approval is sought, such sum to be payable prior to the submission of an application for formal approval;
 - (c) for any highway works outside the administrative area of Kent County Council, a balancing inspection payment, to be calculated and agreed separately with the relevant highway authority, such sum to be payable, if required, prior to commencement of the highway works (or part thereof) in question including recovery of additional costs for changes during the construction phase;
 - (d) the reasonable costs incurred by the relevant highway authorities in monitoring the implementation of any recommendations arising from any road safety audits undertaken, such sum to be payable upon production of a valid invoice for the same;
 - (e) the reasonable cost of any temporary and permanent traffic regulation orders, such sum to be payable prior to the commencement of any work on the making of such Order;
 - (f) the reasonable cost of any other road traffic orders required to facilitate the highway works, such to be payable prior to the commencement of any work on the making of such Order;
 - (g) any value added tax which is payable by the relevant highway authority in respect of such payments referred to in this paragraph [17] and for which it cannot recover from HM Revenue and Customs;
 - (h) any commuted sums in accordance with the relevant highway authority's standard commuted sums policy in place from time to time for the ongoing maintenance by the relevant highway authority of the infrastructure/items the commuted sum covers in respect of permanent works, such sums to be paid by the undertaker to the relevant highway authority before the relevant

certificate of final completion is issued; and

- (i) any other costs reasonably and properly incurred by the relevant highway authority directly in relation to the carrying out of its obligations under this Part of this Schedule which are not otherwise specified in this paragraph 17 or otherwise agreed in writing between the parties.

Security

18.—(1) Prior to commencement of the highway works or part thereof, the undertaker shall provide the security.

(2) On the issue of a certificate of substantial completion, 75% of the security held in respect of the relevant highway works to which the certificate of substantial completion relates is automatically released, less any part(s) expended in accordance with the terms of this Schedule.

(3) On the issue of a certificate of final completion (or a certificate of reinstatement as appropriate), any remaining balance of the part of the security held in respect of the relevant highway works to which the certificate of final completion (or certificate of reinstatement as appropriate) relates is automatically released.

(4) Should the undertaker default in the execution of its obligations in carrying out, maintaining and/or repairing any or all of the relevant part of the highway works, then the relevant highway authority may itself complete, maintain and/or repair (as appropriate) that part of the highway works that has been commenced by the undertaker and maintain or remove and reinstate the same and call upon the undertaker to reimburse it for the cost expended in respect of the same, or require the provider of the security to deposit a sum of money with the relevant highway authority up to the amount of the total figure specified in the security, provided that:

- (a) unless there is a danger to users of the highway, the relevant highway authority shall first give 20 working days prior written notice (or such lesser period as may in the circumstances be reasonable) of its intention to commence work under this sub-paragraph (4);
- (b) any notice served under this sub-paragraph (4)(a) shall specify the period of the notice (“the notice period”), the extent of the work which the relevant highway authority proposes to carry out, and details of all matters in respect of which the relevant highway authority considers that the highway works have not been carried out in accordance with this Part of this Schedule; and
- (c) if before the expiry of the notice period, the undertaker serves written notice upon the relevant highway authority that it intends diligently to execute the works specified in the notice in accordance with this Part of this Schedule within the notice period (or such other period as the relevant highway authority may agree) the relevant highway authority shall not be entitled to execute the relevant part or parts of the highway works specified in the notice served under this paragraph unless the undertaker then fails to execute those works within the agreed timescale.

(5) Should the undertaker default on any of its obligations in this Part of this Schedule in respect of paying costs to the relevant highway authority or indemnifying the relevant highway authority (paragraphs 17 and 21), the relevant highway authority is entitled to draw down the relevant sum from the Security, provided that where there is any dispute on whether the undertaker has defaulted, the dispute has first been settled in accordance with paragraph 6 (escalation of disputes).

Insurance

19.—(1) Prior to the commencement of the highway works the undertaker must have in place public liability insurance in the minimum sum of £10,000,000.00 (ten 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 highway works or use of the local road network by the undertaker and must maintain that insurance until the date of issue of the last certificate of final completion and must provide copies of that insurance to each local highway authority within 5 working days of a request being made.

Indemnity

20.—(1) The undertaker shall, from the date of commencement of each part of the highway works indemnify the relevant highway authority against all claims, charges, costs, expenses, liability or losses

whatsoever arising out of any or all of that part of the highway works (including claims made under Section 10 of the Compulsory Purchase Act 1965, Part I of the Land Compensation Act 1973 and any claims for compensation under the Noise Insulation Regulations 1975 (SI 1975/1763)) and shall at all times indemnify and keep indemnified the relevant highway authority for any claims or similar arising out of any breach or non-observance by the undertaker of its obligations in this Part of this Schedule, provided that the undertaker's indemnity will not extend to any claims submitted to the relevant highway authority arising out of the negligence of the relevant highway authority's employees or to the extent that such claims relate to the ongoing maintenance by the relevant highway authority of infrastructure or items for which commuted sums have been paid by the undertaker pursuant to Paragraph [17(h)] after the issue of the relevant certificate of final completion (unless arising from any breach by the undertaker of its obligation(s) in this Part of this Schedule or from defective or negligent design or construction).

(2) The relevant highway authority shall:

- (a) notify the undertaker as soon as reasonably practicable upon becoming aware of any matter which becomes the subject of a claim for indemnity;
- (b) keep the undertaker reasonably informed of all progress of which it is, or becomes, aware of in connection with that matter and of any proposed settlement;
- (c) not settle or compromise that matter without the previous consent of the undertaker, such consent not to be unreasonably withheld or delayed. Where the undertaker does not so consent it shall indemnify the relevant highway authority against all costs incurred by that highway authority in litigating that matter and will assist the highway authority in such litigation by providing such witnesses and other evidence as it is able to do in relation to any matter in contention.

(3) The indemnity in sub-paragraph (1) above includes:

- (a) all fees incurred by claimants which the relevant highway authority is obliged to pay, and those of the relevant highway authority or its agent or contractor, in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);
- (b) statutory interest payments to claimants and their professional advisors; and
- (c) the relevant highway authority's reasonable and proper legal and surveyor costs in making the compensation, fees and interest payments.