

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

Application by National Grid Electricity Transmission Plc for an Order granting Development Consent for the National Grid Norwich to Tilbury Project

Planning Inspectorate Reference Number: EN020027

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

1 OVERVIEW

- 1.1 This document is a summary of the Written Representation submitted on behalf of National Highways Limited (NH) in connection with an application by National Grid Electricity Transmission Plc for development consent for the National Grid Norwich to Tilbury Project (Planning Inspectorate Reference: EN020027).
- 1.2 National Highways is the statutory body responsible for England's motorways and major A-roads (the strategic road network or "SRN"). NH currently **objects** to the proposed Development Consent Order (DCO) but expresses willingness to engage constructively with the Applicant to resolve concerns.

2 KEY GROUNDS FOR OBJECTION

(a) Transport Assessment and Construction Impacts

NH has concerns regarding the Transport Assessment and Environmental Statement, including the Outline Construction Traffic Management Plan. NH is not satisfied that the full construction-phase impacts on the SRN are properly understood or mitigated. To date limited progress has been made in resolving these issues.

(b) Compulsory Acquisition of Land

The Applicant seeks compulsory acquisition powers over **154** plots of land owned or occupied by NH. This includes **17** plots where NH is a Category 1 Owner and **2** plots where NH is a Category 2 Owner. NH objects to the compulsory acquisition of its land and rights. There is no compelling public interest case and that such acquisition would cause serious detriment to the safe and efficient operation of the SRN.

(c) Impact on the A122 Lower Thames Crossing

The Authorised Development will impact NH's major capital project, the A122 Lower Thames Crossing (DCO granted 25 March 2025). NH requires cooperation from the Applicant to safeguard the significant public investment in this project.

(d) Draft DCO Articles

NH objects to numerous articles in the draft DCO that would authorise interference with NH's statutory powers or grant the Applicant powers over the SRN without adequate controls. Key objections include:

- **Street Works (Article 11):** NH objects to powers to break open streets on the SRN (including A12, A120, A13, A1089) without proper coordination.
- **Application of the 1991 Act (Article 13):** NH objects to this article and the automatic disapplication of the provisions of the New Roads and Street Works Act 1991.
- **Layout Alterations (Article 14):** Powers to alter street layouts are considered too wide.
- **Temporary Closures (Article 16):** NH requires consent and road space booking for any closures affecting the SRN.

- **Access (Article 17):** NH must retain control over accesses from its high-speed network for safety purposes.
- **Construction, alteration and maintenance of streets and other structures (Article 18):** NH objects and does not agree to deemed adoption.
- **Compulsory Acquisition (Articles 24-26):** NH objects to compulsory powers over its land, rights, subsoil, and airspace.
- **Temporary Possession (Articles 27-29):** NH objects to temporary possession powers without consent.
- **Traffic Regulation (Article 49):** NH must maintain control over traffic operations on the SRN.
- **Procedure requiring certain approvals (Article 55):** NH should not be liable for a refund for matters outside its control.
- **Application, disapplication and modification of legislation (Article 58):** NH object to the disapplication of the Highways Act 1980
- **Deemed Consent:** NH objects to deemed consent provisions. It is considered that 28 days is insufficient. NH is particularly concerned about deemed consent given the safety risk of works being carried out to or under the SRN that have bypassed its approval processes.

(e) Requirements (Schedule 3)

NH requires consultation rights to be added to Requirements 7 (Construction hours), 8 (Retention and removal of trees, woodland and hedgerow), 9 (Reinstatement planting plan), and 10 (Reinstatement schemes). NH also requires approval powers for Requirement 4 (Construction Management Plans).

(f) Protective Provisions

The protective provisions in the draft DCO are not agreed by NH. A meeting is being arranged for early March to discuss the protective provisions. NH requires protective provisions in the form set out in Appendix 1 of its Written Representations.

2.2 Proposed Works Affecting the SRN

The electricity transmission cable route proposes:

- **Overhead crossings** at four locations: A14 (between Creting St Peter and Creting St Mary), A12 (north of J29), A120 (between Coggeshall and Marks Tay), and A12 (south of J14).
- **Underground crossing** of the A12 north of Langham.

NH only permits trenchless crossing techniques on the SRN, with Horizontal Directional Drilling as the preferred method. The Applicant must comply with DMRB Chapter CD622 (Managing Geotechnical Risk).

2.3 Statement of Common Ground

Work is progressing on a Statement of Common Ground. NH returned comments on 16 February and awaits a response.

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1 INTRODUCTION

- 1.1 This written representation is made on behalf of National Highways ("NH") in respect of an application by National Grid Electricity Transmission Plc ("**Applicant**") for an order granting development consent for the National Grid Norwich to Tilbury Project ("**DCO**"). The Applicant seeks development consent for proposed authorised development described in Schedule 1 of the draft DCO ("**Authorised Development**").

2 SUMMARY OF NH'S WRITTEN REPRESENTATION AND STEPS REQUIRED TO ENABLE NH TO REMOVE ITS OBJECTION

- 2.1 NH (being the statutory successor to the Highways Agency) is an arms-length government owned company responsible for the ownership, management and improvement of England's motorways and major A-roads, collectively referred to as the strategic road network ("**SRN**").
- 2.2 NH is appointed pursuant to section 1 of the Infrastructure Act 2015 to act as the highway authority, traffic authority and street authority for the SRN. The effect of this appointment is to make NH the statutory custodian of this national asset, conferring on it the status and legislative functions of a strategic highways company. As a strategic highways company, NH must comply with a number of general and specific statutory duties¹.
- 2.3 NH has no desire to stymie development or to impose requirements on the Applicant which are disproportionate to the potential harm that could be caused to the SRN. NH is legally obliged to co-operate with third parties exercising planning or highway functions, which includes the Applicant in this statutory process.² NH is prepared to engage fully and assist in whatever way is reasonable to ensure that the Authorised Development proceeds as quickly and efficiently as possible.
- 2.4 NH currently objects to the DCO and the Authorised Development for the reasons set out below:
- (a) The Transport Assessment and sections of the Environmental Statement, including the Outline Construction Traffic Management Plan, contain assessments and conclusions about the forecast impacts of the scheme during construction, including matters which are material to the SRN. Consequently, the DCO includes proposals for mitigation at several junctions on the SRN. However, **NH has several concerns with the assessments and is not yet in a position to agree with the conclusions set out in the DCO application documents. Further, it is not yet possible to conclude whether the full impact of the proposed development is properly understood and mitigated. These concerns relate solely to the construction stage of the project. Full details of NH's objection are set out in NH's Relevant Representation (RR-2657). To date, limited progress has been made in relation to resolving those issues. On that basis, the Examining Authority is respectfully requested to refer to NH's Relevant Representation (RR-2657) for full details of NH's objection in this regard.**
- (b) The Book of Reference as submitted by the Applicant identifies 154 plots of land owned or occupied by NH for the purposes of its undertaking ("**Plots**") in respect of which compulsory acquisition powers are sought. The compulsory acquisition powers sought which are relevant to NH are described in the book of reference as Acquisition of Land, Acquisition of Rights: Overhead Line, Acquisition of Rights: Underground Cable System, Acquisition of Rights: Overhead Line and Underground Cable System, Acquisition of Rights: Access, Acquisition of Rights: Drainage and Temporary Use ("**Compulsory Powers**"). As noted in NH's Relevant Representation (RR-2657), in order to check the ownership status of each land parcel, NH requested shape files from the Applicant. These shape files were provided on **10th February 2026**. Now that NH

¹ Infrastructure Act 2015, s.5

² Section 5(1) Infrastructure Act 2015

has the shape files it is in the process of checking the information provided to ascertain whether NH assets and operations would be adversely affected by the proposals and whether there are additional interests impacted by the development that are omitted from the Book of Reference. Following its review, it is NH's intention to respond fully to the proposed Compulsory Acquisition of its land and rights on a plot by plot basis. In addition, it is noted that there are proposals to permanently acquire the freehold interest of 17 plots which the Book of Reference notes NH are a Category 1 Owner. There are two additional plots where there are proposals to permanently acquire the freehold interest which the Book of Reference notes NH are a Category 2 Owner. **NH object to the compulsory acquisition of both land and interest to ensure that the safe and efficient operation of the SRN can be maintained by NH, in line with its legal obligations.** In relation to plots where freehold land (as opposed to rights) is sought, the Applicant has approached NH with a view to agreeing a list of affected plots and understanding the interactions on these plots. **Work in this regard is ongoing between NH and the Applicant. However, in the absence of any agreement to the contrary, NH considers that there is no compelling case in the public interest for the Compulsory Powers over the Plots (operational land or otherwise and in relation to rights) and that the grant of the DCO with such provisions would result in serious detriment to the SRN in respect of NH's ability to ensure the safe and efficient operation of the SRN.**

- (c) The Authorised Development will impact on NH's major capital project, the A122 (Lower Thames Crossing) Development, the DCO for which was granted on 25 March 2025 (SI 462). It is necessary for the protection of this project that the Applicant agrees to co-operate with NH in the delivery of the Authorised Development, in a way that safeguards the significant public investment that has been made by NH. It is understood that a separate Written Representation will be submitted by NH as undertaker of the Lower Thames Crossing project.
- (d) The DCO includes a number of provisions which authorise the interference with statutory powers belonging to NH and/or grant the Applicant powers over the SRN which would have significant safety implications if not properly and proportionately controlled through NH's protective provisions. NH requires the Applicant to obtain its consent before exercising powers under various articles where activities affect the SRN or any land in which NH has an interest. These include articles 11, 12, 13, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 38, 39, 40, 41, 44, 45, 47, 49, 50. In addition, please also note NH's objections to Article 55 and 58 set out in NH's Relevant Representation (RR-2657).
- (e) Regarding (d) above, by way of further explanation:-

Street Works and Layout Alterations

- (i) **Article 11 (Street Works)**, NH objects to the power granted to the Applicant to break open streets, place and keep apparatus in or under streets including the A12, A120, A13 and A1089 which form part of the SRN. As the highway authority, NH must have control over operations being carried out on and under its network in order to comply with its duty to co-ordinate the execution of works under section 59 of the New Roads and Street Works Act 1991. Road space booking is required for these works to protect the structure of the street and the integrity of apparatus in it.
- (ii) **Article 12 (Application of the Permit Schemes)**, NH seeks confirmation that permit schemes operated by Norfolk, Suffolk, Essex and Thurrock Councils do not apply to NH.

- (iii) **Article 13 (Application of the 1991 Act)** NH objects to this article and the automatic disapplication of the provisions of the New Roads and Street Works Act 1991.
- (iv) **Article 14 (Power to alter layout, etc. of streets)**, NH considers the power to permanently or temporarily alter the layout of streets in Schedule 6 (including the A12 Ipswich Road and A120 Ipswich Road) without consent is too wide.

Temporary Closures and Access

- (v) **Article 16 (Temporary closure of streets and public rights of way)**, NH requires consent and road space booking in advance of any temporary closure, alteration or diversion of streets/PRoW on the SRN, including the A14, A12, A120, A127, A13 and A1089.
- (vi) **Article 17 (Access to works)**, NH must have control over operations being carried out on its network and accesses from its high-speed network, which is critical from a safety perspective and to maintain the integrity of the asset.

Adoption and Maintenance

- (vii) **Article 18 (Construction, alteration and maintenance of streets and other structures)**, NH objects and does not agree to deemed adoption. The Applicant must comply with NH's adoption and maintenance provisions, and this article should exclude the SRN.

Discharge of Water

- (viii) **Article 20 (Discharge of Water)**, NH is concerned this provision potentially allows the Applicant to make use of highway drainage infrastructure. Paragraph 59 of Draft Circular 01/2022 prohibits new connections into NH's drainage systems.

Protective Works and Surveys

- (ix) **Article 21 (Protective Works)**, NH must have control over operations being carried out on its network and land, structures, apparatus and equipment in which it has an interest.
- (x) **Article 22 (Authority to survey and investigate the land)**, whilst consent is required for trial holes within the highway boundary, consent is not required for access to land for surveys or for NH land outside the highway boundary. NH requires consent for any access or works affecting the SRN or NH's land.

Compulsory Acquisition

- (xi) **Article 24 (Compulsory acquisition of land)**, NH objects to this article and to compulsory powers for the acquisition of its land (whether operational or otherwise). NH must have control over operations being carried out on its network to maintain safety and the integrity of the asset.
- (xii) **Article 25 (Compulsory acquisition of rights)** NH objects to this article and to compulsory powers for the acquisition of rights over its operational land.
- (xiii) **Article 26 (Acquisition of subsoil or airspace only)**, NH requires control over the subsoil vested in it and airspace over the SRN, which is critical from a safety perspective and to maintain asset integrity.

Temporary Possession

- (xiv) **Article 27 (Temporary use of land by National Grid)**, NH objects to the power to take temporary possession of land without NH's consent. The same concerns apply to **Article 28 (Temporary use of land by UKPN)**.
- (xv) **Article 29 (Temporary use of land for maintaining the authorised development)**, NH objects to entry and temporary possession during the maintenance period without consent.
- (xvi) **Concerning Article 30 (Use of subsoil under or airspace over streets)**, NH requires control over operations being carried out on its network.

Rights and Easements

- (xvii) **Article 38 (Extinguishment and suspension of private rights)**, NH requires consent where activities affect the SRN or NH's land.
- (xviii) **Article 39 (Power to override easements and other rights) and Article 40 (Statutory authority to override easements and other rights)**, these articles raise concerns. NH seeks clarification on whether there will be temporary interference or permanent extinguishment of its interests.
- (xix) **Article 41 (Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession)** the concerns raised in relation to Articles 27 and 28 apply equally to Article 41 (see xiv above).

Statutory Undertakers

- (xx) **Article 44 (Statutory undertakers)**, NH must have control over operations being carried out on its network from a safety perspective and to maintain asset integrity.
- (xxi) **Article 45 (Apparatus and rights of statutory undertakers in stopped-up streets)**. NH is investigating whether it has any interest in land within Schedule 7. In any event NH object to the principle of inclusion of this article.

Other Articles

- (xxii) **Article 47 (Application of Landlord and Tenant Law)**, NH does not have sufficient information to understand whether this article is likely to affect NH. In any event NH object to the principle of inclusion of this article.
- (xxiii) **Article 49 (Traffic regulation)**, NH must have control over operations being carried out on its network for safety purposes.
- (xxiv) **Article 50 (Felling or lopping)**, NH is checking whether tree works may affect its biodiversity net gain (BNG) commitments; if so, replacement trees would need to be provided at a location to be agreed.

Deemed Consent

- (xxv) NH objects to deemed consent provisions throughout the draft DCO. NH considers that 28 days is not a reasonable period to consider every application. NH is particularly concerned about deemed consent given the safety implications of works being carried out to or under the SRN that may have bypassed its approval processes. The potential implications from a safety

perspective of something going wrong far outweigh the Applicant's case for such a provision.

- (f) There are a number of Requirements included in Schedule 3 of the DCO which NH has an interest and would expect to be consulted upon. Please refer to NH's Relevant Representation, (RR-2657) for the required amendments to the draft requirements. In summary however, in respect of Requirements 7 (Construction hours), 8 (Retention and removal of trees, woodland and hedgerow), 9 (Reinstatement planting plan) and 10 (Reinstatement schemes), **reference to consultation with NH is required to be added to these Requirements**. In addition, NH require approval powers in connection with Requirement 4 (Construction Management Plans). **Reference to approval by NH is required to be added to this Requirement**. Furthermore, NH cannot agree to Schedule 4 (Discharge of Requirements) Paragraph 1(2) which is effectively deemed consent. In relation to Schedule 4 Paragraph 2 a period of 28 days for requesting further information is required rather than the 5 days set out in the requirement.
- (g) The protective provisions currently included in the dDCO are not agreed by NH. **Inclusion of NH's protective provisions in a form acceptable to NH (as set out in Appendix 1) are required to ensure the necessary information is provided at the relevant stages and that NH's consent is obtained wherever access or works are to take place over any part of the SRN or land in which NH has an interest.**

3 NATIONAL HIGHWAYS AND PROTECTION OF THE SRN

- 3.1 NH's Relevant Representation (RR-2657) at paragraph 2 and 3 set out NH's role as an arms-length government owned company responsible for the ownership, management and improvement of England's motorways and major A-roads, collectively referred to as the SRN. Please refer to NH's Relevant Representation for full details.

4 THE PROPOSED WORKS

- 4.1 The route of the Electricity Transmission cable is currently proposed to cross the SRN overhead in the following four locations:
- A14 – between Creeting St Peter and Creeting St Mary
 - A12 – North of J29
 - A120 – Between Coggeshall and Marks Tay
 - A12 – South of J14
- 4.2 An additional underground crossing is proposed to cross the A12, north of Langham
- 4.3 NH only permits Trenchless Crossing techniques on the SRN, with Horizontal Directional Drilling the preferred method.
- 4.4 From the information submitted, we are unable to determine the geotechnical risks on the A12. Any proposed directional drilling under the SRN will require compliance with The Design Manual for Roads and Bridges (DMRB) Chapter CD622 (Managing Geotechnical Risk). We advise the Applicant to review the requirements of CD622, which can be found on the Standards for Highways website. Consideration should also be given to the potential impact of drilling upon other SRN assets, such as drainage, with evidence provided for NH's review. Additional asset impact may require further approval processes. NH's standard protective provisions (as appended in Appendix 1 secure these approvals and requirements.
- 4.5 All cable works will require monitoring and assurance, with safety risks assessed for monitoring, and survey works within the proximity of the A12 live carriageway.

- 4.6 NH's Relevant Representation (RR-2657) at paragraph 4 (the impact of the proposed development on the SRN) sets out NH's concerns in relation to the proposed works in relation to physical works, traffic and transport (construction impacts), the Environmental Statement and construction management documents. **It is not proposed to set out again the position other than to note that to date no progress has been made with a view to resolving any of the concerns raised.**

5 COMPULSORY ACQUISITION

- 5.1 The Book of Reference as submitted by the Applicant identifies 154 plots of land owned or occupied by NH for the purposes of its undertaking ("**Plots**") in respect of which compulsory acquisition powers are sought. The compulsory acquisition powers sought are described in the book of reference as Acquisition of Land, Acquisition of Rights: Overhead Line, Acquisition of Rights: Underground Cable System, Acquisition of Rights: Overhead Line and Underground Cable System, Acquisition of Rights: Access, Acquisition of Rights: Drainage and Temporary Use ("**Compulsory Powers**").
- 5.2 As noted in NH's Relevant Representation (RR-2657) in order to check the ownership status of each land parcel, NH requested shape files from the Applicant which were provided on **10th February 2026**. Now that NH has the shape files it is in the process of checking the information provided to ascertain whether NH assets and operations would be adversely affected by the proposals and whether there are additional interests impacted by the development that are omitted from the Book of Reference.
- 5.3 Following its review, it is NH's intention to respond fully to the proposed Compulsory Acquisition of its land and rights on a plot by plot basis.
- 5.4 In addition, it is noted that there are proposals to permanently acquire the freehold interest of 17 plots which the Book of Reference notes NH are a Category 1 Owner. There are two additional plots where there are proposals to permanently acquire the freehold interest which the Book of Reference notes NH are a Category 2 Owner. **NH object to the compulsory acquisition of land and interests to ensure that the safe and efficient operation of the SRN can be maintained by NH.** In relation to plots where freehold land (as opposed to rights) is sought, the Applicant has approached NH with a view to agreeing a list of affected plots and understanding the interactions on these plots. **Work in this regard is ongoing between NH and the Applicant. However, in the absence of any agreement to the contrary, NH considers that there is no compelling case in the public interest for the Compulsory Powers over the Plots (operational land or otherwise and in relation to rights) and that the grant of the DCO with such provisions would result in serious detriment to the SRN in respect of NH's ability to ensure the safe and efficient operation of the SRN.**
- 5.5 It is considered likely that some of the plots listed are listed on the Land Registry in the name of National Highways Ltd but the highway has been de-trunked pursuant to an order under section 10 of the Highways Act 1980 and is no longer part of the Strategic Road Network. In the event that this applies, ownership, maintenance, and responsibility for the operation of any roads and land transferred to the LHA and the LHA should be consulted in relation to the possession of these plots. NH is considering the position and further information will follow in due course.

6 DRAFT DCO

Articles

- 6.1 Whilst the protective provisions included in the Applicant's draft DCO for NH's benefit, include some protections for NH, concerns do remain in relation to some of the articles. The form of protective provisions included at Appendix 1 of NH's Relevant Representation (RR-2657), would address those concerns.

- 6.2 Please refer to section 6 of our Relevant Representation (RR-2657) in this regard which sets out in full NH's concerns. Please also refer to the summary of NH's position in paragraph 4.2 (e) of this Written Representation.

Requirements

- 6.3 The Applicant's draft DCO also includes a number of requirements which are of specific concern to NH. More particularly, in relation to Requirements 7 (Construction hours), 8 (Retention and removal of trees, woodland and hedgerow), 9 (Reinstatement planting plan) and 10 (Reinstatement schemes), **reference to consultation with NH is required to be added to these Requirements.** In addition, NH require approval powers for Requirement 4 (Construction Management Plan). **Reference to approval by NH is required to be added to this Requirement.**

7 STATEMENT OF COMMON GROUND UPDATE.

- 7.1 Work is progressing on the Statement of Common Ground. NH returned its comments to the Applicant on the latest draft on 16th Feb and a response is awaited.

8 PROTECTIVE PROVISIONS

- 8.1 The protective provisions currently in the draft DCO APP-056 at Part 5 Schedule 16 are not agreed by NH. A meeting between NH and the Applicant to discuss the protective provisions is being arranged for early March.
- 8.2 A draft of the protective provisions required by NH is included at Appendix 1 to this Written Representation. The draft has not been updated since NH's Relevant Representations.
- 8.3 A full justification for each of the key provisions and definitions of National Highways protective provisions is set in NH's Relevant Representation (RR-2657).

Appendix 1

PART []
FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.,

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

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

Interpretation

2.—(1) Where the terms defined in this Part of this Schedule are inconsistent with the terms defined in article 2 (*interpretation*) of this Order the former prevail.

(2) In this Part of this Schedule—

“as built information” means one electronic copy of the following information where National Highways deems necessary—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) the health and safety file; and
- (l) such other information, including CCTV surveys, as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's *Asset Data Management Manual* as is in operation at the relevant time or any successor of it.

“bond” means a bond in the form annexed hereto at Annex 1 (or substantially in such form) duly executed by the undertaker and a reputable UK surety company or other UK financial

institution to be previously approved in writing by National Highways (such approval not to be unreasonably withheld or delayed);

“the bond sum” means 200% of the cost of carrying out the specified works (to include all costs plus any commuted sum), or such other sum agreed between the undertaker and National Highways, to be provided to National Highways in the form of:

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

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

“commuted sum” means such sum calculated as provided for in paragraph 16 of this Part of this Schedule to be used to fund the future cost of maintaining any new National Highways assets, structures or apparatus provided under the Order;

“condition survey” means a survey of the condition of National Highways structures and assets that in the reasonable opinion of National Highways may be affected by the specified works and further to include a CCTV survey of specified drains that National Highways reasonably considers may be materially and adversely affected by a specified work;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

“detailed design information” means such of the following drawings specifications and calculations as are relevant to the specified works—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways
- (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) regime of California Bearing Ratio testing;
- (k) electrical work for road lighting, traffic signs and signals;
- (l) motorway communications as required by DMRB;
- (m) highway structures and any required structural approval in principle;
- (n) landscaping;
- (o) proposed departures from DMRB standards;
- (p) walking, cycling and horse riding assessment and review report;
- (q) stage 1 and stage 2 road safety audits and exceptions agreed;
- (r) utilities diversions;
- (s) topographical survey;
- (t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;

- (u) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (v) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;

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

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

“final certificate” means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 14;

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

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

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of the specified works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 10 when it considers the specified works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard and “road safety audits shall be construed accordingly”;

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

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

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

“specified works” means so much of any work, including highway works, street works, surveys and signalisation, authorised by this Order including any maintenance of that work, as is undertaken on the strategic road network or land in which National Highways has an interest and “specified work” shall be construed accordingly;

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

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991 (or such updated or revised legislation as may come into force from time to time); and

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

General

3.—In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part of Schedule [] but for the purposes of any approvals required under this Part of Schedule [] the undertaker shall liaise directly with National Highways.

4.—Notwithstanding the limits of deviation permitted pursuant to article [] of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out in under or over the strategic road network unless such works are agreed in writing with National Highways at the absolute discretion of National Highways.

5.—References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

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

Prior approvals and security

7.—(1) The specified works must not commence until—

- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;
- (b) the programme of works has been approved by National Highways;
- (c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);
 - (ii) details of the proposed road space bookings and at the same time as submitting the relevant details the undertaker shall be entitled to submit its application for road space bookings to National Highways;
 - (iii) the identity and qualifications of the contractor and nominated persons;
 - (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker; and
 - (v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding or any successor document;
- (d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
- (e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(v) above;
- (f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
- (g) the undertaker has agreed the estimate of the commuted sum with National Highways;

- (h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;
- (i) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant;
- (j) any further information that National Highways may reasonably request within 14 days of the submission of the detailed design of a specified works has been supplied to National Highways; and
- (k) a condition survey and regime of monitoring has been agreed in writing by National Highways.

(2) The undertaker must not exercise—

- (a) article [] (*maintenance of authorised development*);
- (b) article [] (*street works*)
- (c) article [] (*power to alter layout, etc. of streets*);
- (d) article [] (*permanent stopping up of streets, rights of way and rights of access*);
- (e) article [] (*temporary stopping up of streets, rights of way and rights of access*);
- (f) article [] (*access to works*)
- (g) article [] (*traffic regulation*);
- (h) article [] (*discharge of water*);
- (i) article [] (*protective works to buildings*);
- (j) article [] (*authority to survey and investigate the land*);
- (k) article [] (*compulsory acquisition of land*);
- (l) article [] (*compulsory acquisition of rights*);
- (m) article [] (*extinguishment and suspension of private rights*)
- (n) article [] (*use of subsoil under or airspace over streets*)
- (o) article [] (*temporary use of land by [NGN]*)
- (p) article [] (*temporary use of land for carrying out the authorised development*);
- (q) article [] (*temporary use of land for maintaining the authorised development*); or
- (r) article [] (*felling or lopping trees*) of this Order,

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

(3) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraphs (1) or (2).

(4) Any approval or consent of National Highways required under this paragraph-

- (a) must not be unreasonably withheld;
- (b) must be given in writing; and
- (c) may be subject to any conditions as National Highways considers necessary.

(5) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified

works will be provided on request along with collateral warranties in a form agreed by National Highways.

(6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 7(1) of this Part.

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

Construction of the specified works

8.—(1) The undertaker must give National Highways 3 months' notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways.

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

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

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 7(1) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways. For the avoidance of doubt no approval or consent issued by National Highways shall be taken to be a consent or approval pursuant to the Construction (Design and Management) Regulations 2015.

(4) The undertaker must ensure that (where possible) without entering the highway the highway is kept free from mud, soil and litter as a result of carrying out a Specified Works.

(5) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works pursuant to the Order including all land in which National Highways has an interest for the purposes of inspection and supervision of the specified works.

(6) If any part of the specified works is constructed-

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

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

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

(8) If within 28 days on which a notice under sub-paragraph (6) or sub-paragraph (7) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to

take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure incurred by National Highways in so doing, such sum to be payable within 28 days of demand.

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

(10) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways.

(11) Until such time that National Highways issues the provisional certificate the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 7(1)(h) and the undertaker must carry out such maintenance at its own cost.

(12) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 7(1)(b) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

9.—(1) The undertaker must pay to National Highways a sum equal to the costs and expenses which National Highways reasonably and properly incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph 7(1);
- (b) the supervision of the specified works;
- (c) [contractual costs properly payable to the highway operations and maintenance contractor as a consequence of any specified works, including costs incurred by the highway operations and maintenance contractor in carrying out the tasks referred to in sub-paragraphs (a) and (b) of this paragraph, in which case National Highways will be responsible for the payment of any sums received from the undertaker under this paragraph to the highway operations and maintenance contractor];
- (d) the checking and approval of the information required to determine approvals under this Order;
- (e) all costs in relation to the transfer of any land required for the specified works;
- (f) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and
- (g) any value added tax which is payable by National Highways in respect of such costs and expenses arising under this paragraph and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

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

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National

Highways the estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

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

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 10(4).

(6) Within 28 days of the issue of the final account:

- (a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it;
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional Certificate

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

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

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

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

(4) When—

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

(b) the specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to sub-paragraph (3)(b) have been completed to the satisfaction of National Highways;

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

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

National Highways must issue the provisional certificate.

(5) Following the issue of the provisional certificate, National Highways shall reduce the bond sum in writing to 20% provided that in the event any claim or claims have been made against the undertaker or liability on its part has arisen under the bond sum (which here shall also include any claim or claims to which National Highways are joined howsoever they arise) before that date National Highways will be at liberty to retain a sufficient sum in addition to the 20% to ensure it

does not have to meet any costs for and/or arising from and/or in connection with the specified works.

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

Opening

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

Final condition survey

12.—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 10(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to paragraph 12(1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted and such programme as National Highways may require..

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme and programme pursuant to paragraph 12(2) or fails to submit a scheme for remedial works to National Highways, National Highways may carry out the steps required of the undertaker and may recover on demand any expenditure from the undertaker it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to paragraph 12(1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover on demand any expenditure from the undertaker it reasonably incurs in so doing.

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

Defects Period

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

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

(2) Following the issuing of the provisional certificate National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must

be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

Final Certificate

14.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

- (2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable:
 - (a) inspect the strategic road network; and
 - (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.
- (3) The undertaker must carry out such works notified to it pursuant to sub-paragraph 14(2).
- (4) When National Highways is satisfied that:
 - (a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph 14(2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways; and
 - (b) the NH costs have been paid to National Highways in full;

National Highways must issue the final certificate and upon the issue of the final certificate reduce the bond sum in full provided that in the event any claim or claims have been made against the undertaker or liability on its part has arisen under the bond sum (which here shall also include any claim or claims to which National Highways are joined howsoever they arise) National Highways will be at liberty to retain a sufficient sum to ensure it does not have to meet any costs for and/or arising from and/or in connection with the specified works.

(5) The undertaker must pay to National Highways within 28 days of demand the costs incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to this paragraph 14.

Security

15—(1) The specified works must not commence until the undertaker procures that the specified works are secured by the bond sum to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule.

(2) If at any time the undertaker is in breach of these provisions of this Part of this Schedule or becomes insolvent without prejudice to any other remedy National Highways is entitled upon giving notice to the undertaker to use such parts of the bond sum as National Highways considers necessary. For the avoidance of doubt should National Highways have to carry out works pursuant to this Part of this Schedule it may, at its sole discretion, use the bond sum to forward fund such works.

Commuted sums

16.—(1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, prior to the commencement of the specified works.

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

Insurance

17. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £50,000,000.00 (fifty million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

Indemnity

18.—(1) The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from or in connection to the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order and any such costs shall be paid to National Highways within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Maintenance of the specified works

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

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

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

(4) The provisions of paragraph 11 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Land

20.—(1) Following the issue of the final certificate pursuant to paragraph 14(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works.

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

(3) The undertaker must not exercise the powers of this Order:

- (a) acquire or use land forming part of;
- (b) acquire new or existing rights over; or
- (c) seek to impose or extinguish any restrictive covenants over;

any part of the strategic road network or land owned by National Highways, or extinguish any existing rights of or interfere with apparatus of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalservicesinbox@nationalhighways.co.uk

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

article [] (*modification of the 2017 Regulations*) of this Order to directly vest in National Highways any such land or interest.

Expert Determination

- 21.—(1) Article [] (*arbitration*) of the Order does not apply to this Part of this Schedule.
- (2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.
- (3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.
- (4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.
- (5) The expert must—
- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;
 - (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
 - (c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and
 - (d) give reasons for the decision.
- (6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article [] (*arbitration*).
- (7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

Annex 1