

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 8: Closing Submission and Response to Deadline 7 Documents

Submitted on behalf of National Highways Limited

1 INTRODUCTION

- 1.1 This document is submitted on behalf of National Highways Limited ("**NH**") and represents NH's closing statement setting out the matters that NH has previously raised during the examination which has not been resolved to NH's satisfaction. In doing so this submission also comments on the following documents received by Deadline 7, namely:
- (a) Document 8.4.16 – Applicant's Comments on any Further Information or Submissions Received by Deadline 6 [**REP7-481**]; and
 - (b) Document 8.7 – Statutory Undertaker Tracker Revision F (Clean Version) [**REP 7-484**];
 - (b) Document 8.4.17 – Applicant's Comments on Post-Hearing Submissions and Interested Party Action Points [**REP7-482**]; and
 - (d) Document 8.29.8 – Application under Section 127 of the Planning Act 2008 (National Highways) – Statutory Undertakers' Land [**REP7-522**]; and
 - (e) Document 3.1 – Draft DCO [**REP7-064**];
- 1.2 On the basis that the above documents are at times both repetitive and inconsistent as between each other and this document also serves as NH's closing submission, this response is organised thematically rather than document-by-document, in order to assist the Examining Authority in identifying the parties' respective positions on each substantive issue.
- 1.3 Whilst the Applicant's documentation submitted at Deadline 7 notes that "*it remains committed to on-going engagement with NH*" in relation to various items, (see Applicant's Comments on any Further Information or Submissions Received by Deadline 6 [**REP7-481**]) it should be noted that the Applicant and NH have not met since 18 June 2026, despite various correspondence between the parties with NH seeking to progress and resolve issues.

2 PROTECTIVE PROVISIONS – GENERAL POSITION (SCHEDULE 16, PART 5)

- 2.1 As noted at Issue Specific Hearing 4, in its Deadline 6 comments on any further information or submissions received by deadline 5 and 5A [**REP6-155**] and in its Deadline 7 submission [**REP 7-561**], NH was concerned that agreement may not be reached on the form of the protective provisions included in Part 5 of Schedule 16 for the benefit of NH in its capacity as strategic highway authority. NH confirms that agreement remains to be reached on the protective provisions.
- 2.2 Significant changes have been made by the Applicant to the protective provisions contained in the draft DCO submitted at Deadline 6 [**REP6-031**], which appeared to narrow the issues between the Applicant and NH. The changes to the draft DCO submitted at Deadline 7 did not alter this position. The documents noted above in paragraph 1.1 submitted at Deadline 7 (other than the draft DCO [**REP7-064**]) are, however, mutually inconsistent on a number of points.
- 2.3 The Statutory Undertaker tracker submitted at Deadline 7, for instance, within Table 2.3 sets out the outstanding issues between NGET and NH still refers to a requirement for the 5.5 metre allowance exception in paragraph 4 and paragraph 7(1); references additional drafting in paragraph 9(3) which is not now incorporated in the draft DCO; continues to push back on reference to a bond which has now been included in the draft DCO in paragraph 15.
- 2.4 Recent conversations with the Applicant's solicitors on the Protective Provisions support that the changes to the draft DCO submitted at Deadline 6 are representative of where positive negotiations have reached. For the purpose of this submission, therefore, we take the approach that the draft DCO submitted at Deadline 7 represents the up to date position and on that basis,

we are disregarding any contrary submissions in relation to the form of the Protective Provisions set out in those other documents.

- 2.5 The draft 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 and the Requirements. In this regard, the position remains as set out in NH's deadline 6 submission. For the avoidance of doubt, the form of the Protective Provisions which NH is seeking, against those that currently appear on the face of the dDCO is annexed at **Appendix 1 to NH's Deadline 6 submission [REP7-561]** with the changes required by NH shown in track changes.
- 2.6 By way of a summary and as set out in NH's Deadline 6 submission **[REP6-155]**, there remain matters that are unresolved between the parties. These are set out in section 3.5 of [REP6-155] and below with updates:
- (a) "Commutated sum": The reference to payment of the commuted sum in paragraph 10(4) has been updated to reference to specified works captured by paragraph 7(2). This should reference paragraph 7(1).
 - (b) Other changes in the definitions at paragraph 2 relate to unnecessary or duplicate wording: Paragraph 1(4) which provided that the Protective Provisions do not apply where the works are regulated by the 1991 Act or the street works articles has been deleted which is welcomed by NH. As noted, the Protective Provisions need to address all 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.
 - (c) Prior Approvals and Security: paragraph 7(2) which states that certain articles should not be exercised over the SRN or land in which NH has an interest without the express consent, needs to capture all the articles referenced in NH's template Protective Provisions, which include powers associated with compulsory acquisition. This ensures that NH is aware of the progress of the specified works affecting the SRN, the scope of those operations, the potential impact to road users and that compulsory acquisition powers are only exercised with NH consent. Prior approval is agreed in relation to Articles 16, 20, 21 and 22 in the protective provisions in the dDCO. This paragraph also needs to reference Articles 11, 12, 13, 14, 16, 17, 18, 19, 24, 25, 26, 27, 28, 29, 30, 38, 39, 40, 41, 44, 45, 47, 49 and 50. The detailed explanation of why the provisions need to be exercised only with NH's approval where the powers are to be exercised over the SRN or land within NH's ownership is set out in length in the table in section 6 of NH's Relevant Representation.
 - (d) The Applicant considers NH's proposed list of articles in paragraph 7(2) to be "unnecessarily extensive" and relies on the shorter list approved in the National Grid (Yorkshire Green) DCO 2024 as precedent for a more limited scope. NH maintains that the fuller list is necessary for the protection of the SRN and the safe and efficient operation of the network in connection with this application. Each article on NH's list has the potential to affect the SRN or NH's proprietary interests. The Yorkshire Green DCO is distinguishable on its facts with different SRN interfaces and a different scale of works and is not comparable. Therefore, Yorkshire Green does not establish a binding precedent for the scope of consent provisions. NH does not accept a presumption that its list should be reduced to match the Yorkshire Green DCO.
 - (e) Having reviewed the list of articles at paragraph 7(2), NH would also note that the requirement for consent only comes into effect where the exercise of the powers in the article is over any part of the SRN or on land which NH has an interest. This is a matter of fact and unless these qualifying criteria apply, the Applicant is free to exercise the

relevant powers without recourse to NH. This qualification provides an appropriate balance, and it should not be for NH to take the risk of removing certain articles of the draft DCO where design is not fixed and there is flexibility on how powers can be exercised in certain circumstances.

- (f) Payments (paragraph 9): NH does not hold a budget to cover any costs associated with the Project and paragraph 9(c) needs to be included to enable the recovery by NH of contractual costs properly payable to the highway operations and maintenance contractor as a consequence of any specified works and not just costs incurred by the highway operations and maintenance contractor in carrying out the tasks referred to in sub-paragraphs (a) and (b) of paragraph 9(1)).
- (g) Indemnity (paragraph 18): Due to NH not holding a budget to cover any costs, claims or expenses for the Project, NH must be held harmless for the construction, maintenance and operation of the Authorised Development and any resultant impacts. It is common practice for statutory undertakers to be indemnified in such circumstances and the Applicant on any DCO that it is affected would seek similar provisions. NH understands that there is agreement with paragraph 18 of the dDCO in this regard.
- (h) Maintenance of the specified works (paragraph 19): NH requires the Applicant to obtain a road space booking before undertaking any maintenance works on specified works located on or over the SRN. This is necessary to manage traffic and ensure the safety of road users and workers. The Applicant proposes an exception for emergency works carried out under section 57 of the New Roads and Street Works Act 1991 ("NRSWA"), citing precedent in the Tilbury 2, Sheringham and Dudgeon Extension, and East Anglia TWO DCOs. NH acknowledges the statutory right to carry out emergency works under section 57 of NRSWA without prior notice to the street authority. However, NH notes that section 57 contains its own safeguards (including the requirement to give notice as soon as reasonably practicable after commencing emergency works). NH does not object to an appropriately drafted carve-out for genuine emergency works within the meaning of section 57 of NRSWA, provided that the Applicant is required to notify NH as soon as reasonably practicable and that the road space booking requirement applies to all non-emergency maintenance.
- (i) Land provisions (paragraph 20): This is one of the most substantial disputes between the parties and is closely connected to the compulsory acquisition and S127 matters addressed below. Accordingly, the below addresses the Applicant's comments in Post-Hearing Submissions and Interested Party Action Points **[REP7-482]**, the Statutory Undertaker Tracker Rev G **[REP7-484]** and Document 8.29.8 Application Under S127 of the Planning Act 2008 (NH) – Statutory Undertakers Land **[REP7-522]**:
 - In terms of the land provisions in the PP's, this paragraph needs to mirror NH's template protective provisions. NH needs to be able to call for a freehold transfer of land within the extent of Strategic Road Network boundary which is not in the ownership of NH but has been acquired by the undertaker for the purposes of carrying out the specified works. No part of the SRN or land owned by NH should be compulsorily acquired, nor existing rights of NH extinguished or apparatus interfered with in respect of any third party property, except with the consent of NH.
 - The Applicant proposes compulsory acquisition of Class 1 land (freehold) over portions of the SRN, which it describes as precautionary only, intended to address uncertainty in highway boundaries and freehold ownership. The Applicant states that this land is intended ultimately to be transferred to NH and that the power can only be exercised with NHs' consent under paragraph 20. NH notes the Applicant's stated intention but considers that the inclusion of compulsory acquisition powers over operational SRN land in the dDCO is unnecessary where the purpose is solely to address boundary uncertainty. Since the land is already held by NH, the inclusion of CA powers is otiose. If there is genuine uncertainty, it should be resolved through

land registry searches and agreement, not through compulsory acquisition powers. NH requests that its plots be removed from the Book of Reference or reclassified from Class 1 to Class 8 (white land), consistent with the approach taken in the Oxfordshire Strategic Rail Freight Interchange DCO [TR050008].

- Acquisition of rights (easement) – overhead lines: The Applicant proposes a fallback compulsory acquisition power to acquire rights (equivalent to an easement) to oversail the SRN with the overhead transmission line, in the event that a negotiated easement is not agreed. NH objects to this in principle. NH considers that the compulsory acquisition of rights to oversail the public highway with an overhead electricity line is objectionable in principle and is not required. Since its Deadline 7 submissions, NH has procured an opinion from Leading Counsel, Reuben Taylor KC that supports NH's position. A copy of that opinion is appended at Appendix 3. Leading Counsel has advised:
 - Articles 3, 4 and 30 of the draft DCO together with the powers held by the Applicant pursuant to the Electricity Act 1989 provide “sufficient rights” which achieve all of the matters provided for in paragraph 2.6.1 of NPS EN-5. On that basis, it is difficult indeed to see how it is necessary to acquire an easement to do the very thing that Article 30 authorises without such an acquisition.
 - In Leading Counsel's view, no reasonable decision maker examining these provisions could conclude that the statutory rights and authority conferred by the draft DCO in respect of lines passing over the SRN are not sufficient for the purposes of paragraph 2.6.1 of NPS EN-5. Further, it would not be reasonable to conclude that there is a compelling case for the acquisition of an easement to achieve that which can already be achieved by virtue of the powers in the draft DCO.
 - Further, even with NH's proposed protective provisions in place, which retain the effect of ss 83 and 84 of NRSWA 1991 ("the 1991 Act") (see paragraph 1(3) of the protective provisions), the continued ability to ensure transmission via the Scheme would be protected. In Leading Counsel's view the 1991 Act provisions strike an appropriate balance between protection of both the Applicant's interests and NH's interests in furtherance of the public interest. Given that both the Applicant and NH operate in the public interest, he cannot see a rational basis for concluding that the NH protective provisions that seek the continued application of sections 83 and 84 of NWSRA 1991 should be omitted from the DCO since there is no basis for concluding that NH's functions and duties are somehow inferior to the functions and duties of the Applicant.
- Acquisition of rights – underground cable: NH accepts that an easement is required for the underground cable crossing (given the depth of the subsoil works) and is prepared to grant such an easement by agreement. The parties are aligned on this point. A draft easement has been provided by the Applicant to NH. NH's initial view is that the draft easement is unacceptable because it unduly favours the Applicant. A draft easement is currently being prepared by NH. The ExA will appreciate that preparing a precedent draft is not a one size fits all process. However, NH will be in a position to provide a draft to the Applicant after the close of the examination.

Requirements

- 2.7 Please see Document 8.4.16 – Applicant's Comments on any Further Information or Submissions Received by Deadline 6 **[REP7-481]** at page 37 to 40 inclusive, along with our

NH's submissions at Deadline 7 (paragraph 3.8 to 3.12) in this regard. For ease of reference, NH's position is again set out below and in **Appendix 2** attached.

- 2.8 By way of summary of the unresolved issues, there are several Requirements included in Schedule 3 of the dDCO in which NH has an interest and would expect to be consulted on namely: 8 (retention and removal of trees, woodland and hedgerow), 9 (Re-instatement planting plan) and 10 (Re-instatement schemes) it is noted that the latest version of the dDCO does not address NH's concerns.
- 2.9 In relation to Requirements 8, 9 and 10, NH requires to be consulted where works affect the SRN or relate to land NH have an interest in. This is not unreasonable. NH has an interest in the retention, removal and replacement of trees and hedgerows on or adjacent to the SRN, including for reasons of road safety (sightlines), drainage, and biodiversity net gain commitments. NH requires consultation on replacement planting locations to ensure compatibility with the SRN. NH must have control over the operations being carried out on its network. This is critical from a safety perspective and to maintain the integrity of the asset.
- 2.10 The Applicant resists the above amendments, contending that the protective provisions in Schedule 16 already control works on the SRN and that formal consultation through the Requirements mechanism is unnecessary. The Applicant's position is that the relevant planning authority could, if it considered it necessary, consult NH as part of its discharge process, but that there is no obligation to do so. NH considers that reliance on informal or discretionary consultation is inadequate. NH's statutory responsibilities for the safety and efficient operation of the SRN require that it has a formal, secured role in the discharge of Requirements where works may affect the network. The Protective Provisions address works on the SRN itself, but the Requirements address broader matters (construction hours, tree works, reinstatement) which affect the SRN environment and operations. These are complementary, not duplicative, safeguards.
- 2.11 On Requirement 7 (Construction hours), NH has previously asked that sub-paragraph (1) which provides for variations to the core terms includes consultation with NH. NH still has major unresolved concerns regarding construction traffic and so NH may need construction traffic to be operated outside peak hours depending on ongoing modelling and discussions with the Applicant regarding the Assessment, which NH would want to be fed into this Requirement.
- 2.12 Reinstatement period – A120 verge: NH objects to the Applicant's proposed 21-month reinstatement period for the A120 verge. NH requires a 6-month reinstatement period for this location, on the basis that the safe and efficient operation of the SRN requires prompt reinstatement of verge areas. The Applicant resists reducing the general reinstatement period from 21 months (tied to the Article 27/28 temporary land use periods) but states it remains open to discussing site-specific variations. The Applicant points out in its responses to Applicant's Comments on any Further Information or Submissions Received by Deadline 6 [REP7-481] that the 21 month period links back to the time period in Article 27 (Temporary use of land by the Application) and Article 28 (Temporary use of land by UKPN) of 3.1 Draft DCO [Rev G] in which the undertaker is not permitted to remain in possession of the land without the consent of the owners after the end of 21 months. NH maintains that a 6-month period for the A120 verge is proportionate and necessary to ensure road safety and network integrity. NH is prepared to discuss site-specific variations for other locations but maintains its requirement for 6 months on the A120.
- 2.13 On the Discharge of Requirements, paragraph 2 provides that, where an application has been made under paragraph 1, the relevant authority may request such reasonable further information from the undertaker as it considers is necessary to enable it to consider the application.
- 2.14 Paragraph 2 (2) provides, *"If the relevant authority considers further information is necessary and the requirement does not specify that consultation with a requirement consultee is required, the relevant authority must, within 5 business days of receipt of the application, notify the*

undertaker in writing specifying the further information required" and paragraph 2 (3) provides "If the requirement specifies that consultation with a requirement consultee is required, the relevant authority must issue the consultation to the requirement consultee within 5 business days of receipt of the application and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 5 business days of receipt of such a request and in any event within 15 business days of receipt of the application."

- 2.15 NH's position was that were it to be required to be consulted, 5 days is not enough time for NH to respond, and the time period should be extended. NH note that the Applicant proposes a 25 business day decision period for discharge of Requirements, citing the National Grid (Bramford to Twinstead Reinforcement) Order 2024 as precedent which is helpful. The Applicant has also updated the draft DCO such that applications for discharge of requirements will go to consultees at the same time as they go to the relevant planning authority to streamline the process. Again this is welcomed.
- 2.16 In addition, to the above, as per NH's comments as set out in paragraph 7.5 of this submission, NH also requires an amendment to Requirement 4 so that NH is an approval body for the CTMP before commencement of the development's construction. This amendment is necessary due to unresolved traffic and transport issues, which would otherwise constrain NH's ability to ensure the safe operation of the SRN.

3 TRAFFIC AND TRANSPORT

- 3.1 In section 3 of NH's Deadline 6 submissions **[REP6-155]** NH noted its continuing concerns on certain Traffic and Transport matters and construction impacts. In section 4 of that submission NH responded to the updated Outline Construction Traffic Management Plan. The Applicant has sought to respond to those concerns in its Deadline 7 Submission document: "Document 8.4.16 – Applicant's Comments on any Further Information or Submissions Received by Deadline 6" **[REP7-481]**. Appendix 4 is an extract from the Applicant's submission which includes a further response by NH setting out the position as of Deadline 8.

4 COMPULSORY ACQUISITION / SECTION 127 AND SECTION 138 MATTERS

- 4.1 The Applicant's Document 8.29.8 – Application under Section 127 of the Planning Act 2008 (National Highways) – Statutory Undertakers' Land **[REP7-522]** sets out the Applicant's formal application under section 127 of the Planning Act 2008 in respect of NH's land. NH has made representations which have not been withdrawn, and sections 127(2), (3), (5) and (6) of the 2008 Act are therefore engaged.
- 4.2 As set out above in relation to the land provisions of the protective provisions (paragraph 20), NH objects to the compulsory acquisition of its operational land (approximately 154 plots as identified in the Book of Reference). NH's position is that the relevant works are either: (a) already authorised by the dDCO subject to the Protective Provisions; or (b) capable of being secured through the Protective Provisions and agreement between the parties, without recourse to compulsory acquisition powers. NH requests that its plots be removed from the Book of Reference entirely, or reclassified from Class 1 (land) or Class 2-5 (rights) to Class 8 (white land), consistent with the approach taken in the Oxfordshire Strategic Rail Freight Interchange DCO [TR050008].
- 4.3 In relation to the 'serious detriment' test – sections 127(2)-(3) and (5)-(6): The Applicant contends that its proposed compulsory acquisition can be carried out without serious detriment to NH's undertaking, relying principally on the Protective Provisions package in Part 5 of Schedule 16 as mitigation. NH disagrees. NH's position is that the Applicant has not demonstrated that Articles 3, 4 and 30 of the draft DCO together with the powers held by the Applicant pursuant to the Electricity Act 1989 do not provide "sufficient rights" which achieve all of the matters provided for in paragraph 2.6.1 of NPS EN-5.

- 4.4 Leading Counsel, as noted above, has advised that no reasonable decision maker examining these provisions could conclude that the statutory rights and authority conferred by the draft DCO in respect of lines passing over the SRN are insufficient for the purposes of paragraph 2.6.1 of NPS EN-5. Further, it would not be reasonable to conclude that there is a compelling case for the acquisition of an easement to achieve that which can already be achieved by virtue of the powers in the draft DCO. NH further notes that the Applicant's reliance on the National Grid (Yorkshire Green) DCO as precedent is of limited weight. Each section 127 application must be assessed on its own merits, and the Secretary of State's decision in Yorkshire Green does not establish a universal principle that compulsory acquisition of rights is appropriate whenever an electricity undertaker proposes to cross the SRN. The interfaces, scale, and circumstances of the present project are distinguishable.
- 4.5 Section 138 – extinguishment of rights / removal of apparatus: NH notes the Applicant's contention that sections 138 powers are necessary for the development. NH's position is that, to the extent the Protective Provisions and the existing statutory framework adequately regulate the interface between the parties' apparatus and the SRN, there is no demonstrated necessity for extinguishment or removal powers.
- 4.6 NH and the Applicant have agreed that there are Plots to be removed from the Book of Reference [Revision E] because they have been de-trunked ("the De-trunked Plots"). No NH plots appeared to have been removed from the Book of Reference [REP6-043]. The plots included in the Book of Reference also include 3 new plots added to the 4.3 Book of Reference [Revision E] at Deadline 4. No engagement has been received by NH on those plots.
- 4.7 NH has requested the remove of NH plots from the Book of Reference or the reclassification of them as Class 8 (white land). This has not been done and accordingly, the issues of compulsory acquisition, section 127 and section 138 matters remains in dispute and NH's objection is maintained.

National Highways
4 August 2026

APPENDIX 1

Amendments to Protective Provisions in the dDCO

PART 5

FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.

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

(2) For the avoidance of doubt, the provisions of this Part of this Schedule do not apply for the protection of the LTC undertaker in relation to the LTC plots.

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

~~(4) This Part of this Schedule does not apply to any works or activities that are regulated by the provisions of Part 3 of the 1991 Act or articles 11(1) (street works), 14(1) (power to alter layout, etc. of streets), 17(1) (access to works) and 49 (traffic regulation) of this Order.~~

(2) Interpretation

~~2.~~ 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)~~ (2) In this Part of this Schedule—

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

- ~~(a)~~ (i) 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 including CCTV surveys.

“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 phase of the specified works (to include all costs plus any commuted sum for such phase), or such other sum agreed between the undertaker and National Highways, to be provided to National Highways in the form of:

- a) ~~(a)~~ a bond; or
- b) ~~(b)~~ a cash surety; or
- c) ~~(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 14Q;

“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;

“LTC plots” means [];

“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;

“phase” means that part of the specified works which is to be carried out in separate phases in the areas identified as Work Nos. [] on the works plans or such other phasing arrangements agreed between the undertaker and 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 in on under or over 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 highway assets together with all land, apparatus and rights located in, on, over or under the highway;

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the 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 16 but for the purposes of any approvals required under this Part of Schedule 16 the undertaker shall liaise directly with National Highways.

4. Notwithstanding the limits of deviation permitted pursuant to article 5 of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out in ~~on~~ under or over the strategic ~~4~~-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.~~ 7.(1) ~~Save in respect of~~ 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 ~~(e)(v)~~(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 1 [] (maintenance of authorised development);
- (b) article 1 [] (street works)
- (c) article 1 [] (power to alter layout, etc. of streets);
- (d) article 1 [] (permanent stopping up of streets, rights of way and rights of access);
- (e) ~~(a)~~ article 16 [] (temporary closure stopping up of streets and public, rights of way and rights of access);
- (f) article 1 [] (access to works)
- (g) article 1 [] (traffic regulation);
- (h) ~~(b)~~ article 20 [] (discharge of water);
- (i) ~~(e)~~ article 24 [] (protective works to buildings);
- (j) ~~(d)~~ article 22 [] (authority to survey and investigate the land);
- (k) article 1 [] (compulsory acquisition of land);
- (l) article 1 [] (compulsory acquisition of rights);
- (m) article 1 [] (extinguishment and suspension of private rights)
- (n) article 1 [] (use of subsoil under or airspace over streets)
- (o) article 1 [] (temporary use of land by [NGN])
- (p) article 1 [] (temporary use of land for carrying out the authorised development);
- (q) article 1 [] (temporary use of land for maintaining the authorised development); or
- (r) article 1 [] (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)~~(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~~sub- paragraphs (1) or ~~(2)~~(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;~~;~~
- ~~and (d)~~

(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)~~7 of this Part.

(7) Any reference to deemed consent in any of the articles of this Order shall not apply to any application for consent, agreement or approval required or contemplated to be given by National Highways.

Construction of the specified works

~~8.—~~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~~—provided that nothing in this paragraph 8(1) shall prevent the undertaker from commencing a specified work pursuant to a road space booking that has been secured from National Highways in accordance with paragraph 8(2).~~

(2) The undertaker must comply with National Highways' road space booking procedures when booking ~~(2)~~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)~~ ~~(a)~~ 7 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 Work.

(5) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the

undertaker by National Highways) to gain 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.~~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(4)~~7;
- (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];the checking and approval of the information required to determine approvals under this Order;
- ~~(d)~~ where relevant, all costs in relation to the transfer of any land required for the specified works;
- ~~(e)~~ (d)—all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and sub-paragraphs (a)—~~(d)~~(d); and
- ~~(f)~~ (e)—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 ~~(4)~~2 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 ~~(7)~~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.~~ **10.**(1) Following the completion of any phase of the 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)~~ **(3)(b)** have been completed to the satisfaction of National Highways;
- (c) the as built information has been provided to National Highways; and
- (d) ~~in respect of any specified works captured by paragraph 67(2)~~ 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 relevant to the phase in writing to 20% of the total bond sum for that phase 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 for any phase (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 any of the specified works.

(6) ~~†~~ The undertaker must submit a stage 4 road safety audit 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.~~ ~~(†)~~ **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.~~ ~~(†)~~ **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 phase of specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to paragraph ~~12(†)~~ **12** 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 (2)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 written 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~~re-surveys pursuant to paragraph ~~12(4)~~12 give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover on written 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.~~ 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 for the relevant phase. 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.~~ 14.(1) The undertaker must apply to National Highways for the final certificate for each phase of the specified works no sooner than 12 months from the date of the provisional certificate for that phase.

(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;

~~(e)~~ National Highways must issue the final certificate and upon the issue of the final certificate the bond sum for that phase is released 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 ~~14.0.~~

Security

~~15.~~ 15.(1) No phase of 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 ~~5 business days~~² notice to the undertaker to ~~allow the undertaker to rectify any breach 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 in respect of each phase prior to the issue of the provisional certificate for that phase.

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 (50 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.~~ 18.(1) The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways ~~directly~~ 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 ~~notify the undertaker upon receipt of any claims, charges, costs, expenses, liability or losses referred to in subparagraph (1);~~

~~(2) not accept or compromise any claims, charges, costs, expenses, liability or losses to which this indemnity relates without first seeking comments from the undertaker to its validity and as to the amount of the settlement and considering the same; and~~

~~(3)~~ (2) The undertaker's duty to indemnify National Highways pursuant to paragraph 18(1) above shall apply in full and further the undertaker's duty to indemnify shall continue in full force and effect until all such claims have been determined, settled and discharged and National Highways reimbursed in full notwithstanding the issue of the final certificate for any phase or the final phase of specified works.

Maintenance of the specified works

~~19.~~ 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 ~~provided that nothing in this paragraph 19(2) shall prevent the undertaker from undertaking emergency maintenance works in accordance with section 57 of the New Roads and Street Works Act 1991.~~

(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 days³ in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph ~~14~~ 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 20 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) ~~20.~~ The undertaker must not under the powers of this Order:

- (a) to acquire ~~Class 4~~ or use land forming part of: ~~or~~
- (b) acquire new or existing rights over; or
- (c) (b) seek to impose or extinguish any restrictive covenants ~~[which conflict with the use of the strategic road network]~~ over;
- ~~(e) 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 ~~save for the avoidance of doubt these provisions do not apply to, with the exclusion of 20 (b) above, Article 25 (acquisition of rights) which may be exercised without the consent of National Highways.~~

(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 1 (compulsory acquisition of land) and article 1 (compulsory acquisition of rights and imposition of restrictive covenants) as applied by articles 1 (application of the 1981 Act) and article 1 (modification of the 2017 Regulations) of this Order to directly vest in National Highways any such land or interest

Expert Determination

~~21. 21.~~—(1) Article ~~62~~ (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 ~~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 ~~62~~ (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.

APPENDIX 2

Amendments to the Requirements in the dDCO

Requirement	Amendments to Drafting (in red)	Comments
4.	<i>(1) No stage of the authorised development may commence until, for that stage, the following plans as relevant to that stage have been submitted to and approved by the relevant planning authority (following consultation with Natural England in the case of the landscape and ecological management plan, the Environment Agency in the case of the code of construction practice and, where relevant in the context of the operation of the local and or strategic road network, the relevant highway authority) save that the construction traffic management plan referred to in (b) below must also be approved by NH.</i> <i>The relevant plans are—</i> <i>(a) code of construction practice (which must be substantially in accordance with the outline code of construction practice);</i> <i>(b) construction traffic management plan (which must be substantially in accordance with the outline construction traffic management plan);</i> <i>(c) landscape and ecological management plan (which must be substantially in accordance with the outline landscape and ecological management plan);</i> <i>(d) public rights of way management plan (which must be substantially in accordance with the outline public rights of way management plan)</i>	See paragraph 7.5 above
7. Construction Hours	<i>(1) Subject to sub-paragraphs (2) to (5) work may only take place between the hours of 07.00 and 19.00 Monday to Friday and 07.00 and 17.00 on Saturdays, Sundays, bank holidays and other public holidays (the core working hours), unless otherwise</i>	See above

Requirement	Amendments to Drafting (in red)	Comments
	approved by the relevant planning authority (in consultation with NH where any work affects the Strategic Road Network or land NH have an interest in). (2) No percussive piling works may take place outside of the hours of 0700 to 1900 Monday to Friday and 0700 to 1700 on Saturdays, unless otherwise approved by the relevant planning authority (in consultation with NH where any work affects the Strategic Road Network or land NH have an interest in).	
8. Retention and removal of trees, woodland and hedgerows	(1) Unless otherwise agreed with the relevant planning authority, no stage of the authorised development may commence until, for that stage, a plan showing the trees, groups of trees, woodlands and hedgerows to be retained and/or removed during that stage has been submitted to and approved by the relevant planning authority (in consultation with NH where any trees, groups of trees, woodlands and hedgerows affects the Strategic Road Network or land NH have an interest in) ... (4) All trees, groups of trees, woodlands and hedgerows shown on the relevant plan for that stage of the authorised development must be retained and/or removed in accordance with the relevant plan as approved under sub-paragraph (1) for that stage of the authorised development, unless otherwise agreed by the relevant planning authority (in consultation with NH where any trees, groups of trees, woodlands and hedgerows affects the Strategic Road Network or land NH have an interest in).	As per NH's comments on Article 50, if works undertaken to trees, woodlands or hedgerows affect any NH BNG commitments a replacement trees or hedgerows would need to be provided to satisfy that existing commitment at a location to be agreed. NH would therefore want to be consulted on the proposals
9. Reinstatement planting plan	(1) Unless otherwise agreed with the relevant planning authority, no stage of the authorised development may be brought into operational use until, for that stage, a reinstatement planting plan for trees, groups of trees, woodlands and hedgerows to be reinstated during that stage has been submitted to and approved by the relevant	As per NH's comments on Article 50, if works undertaken to trees, woodlands or hedgerows affect any NH BNG commitments a replacement trees or hedgerows would need to be provided to satisfy that existing commitment at a location to be agreed. NH would therefore want to be consulted on the reinstatement planting proposals.

Requirement	Amendments to Drafting (in red)	Comments
	planning authority (in consultation with NH where the reinstatement planting affects the Strategic Road Network or land NH have an interest in)..... (5) All reinstatement planting works approved under sub-paragraph (1) must be carried out in accordance with the approved reinstatement planting plan for that stage of the authorised development, unless otherwise approved by the relevant planning authority (in consultation with NH where any reinstatement planting works affect the Strategic Road Network or land NH have an interest in). (7) Any trees or hedgerows planted as part of an approved reinstatement planting plan that, within a period of five years after planting (or such other period as is specified in the landscape and ecological management plan approved pursuant to requirement 4), are removed, die or become in the opinion of the relevant planning authority seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority (in consultation with NH where any reinstatement planting works affect the Strategic Road Network or land NH have an interest in).	
10. Reinstatement schemes	(1) Subject to sub-paragraphs (2) and (3), any land within the Order limits which is used temporarily for construction is to be reinstated to a condition suitable for its former use, or such condition as the relevant planning authority may approve, within 21 months 6 months of completion of the construction of the stage of authorised development for which it was required, or such further time as may be approved by the relevant planning authority (in consultation with NH where any work affects the Strategic Road Network or land NH have an interest in).	NH seek the reinstatement of the A120 verge within 6 months following the use of the access ceasing. This is in the interest of maintaining the safe and efficient operation of the SRN. 21 months is an unreasonably long period. Inclusion of the drafting in red would address NH's concern.

APPENDIX 3

Leading Counsel's Written Opinion

RE: NORWICH TO TILBURY DCO – OVERHEAD LINES AND COMPULSORY ACQUISITION

O P I N I O N

1. National Grid is currently at examination seeking a DCO for the Norwich to Tilbury Project. Part of that project includes four proposed overhead power cable crossings of the Strategic Road Network operated by National Highways.
2. In the draft Order, NG seeks the compulsory acquisition of permanent easements.
3. NH has objected to this compulsory acquisition on the basis that it is not necessary to secure and deliver the scheme's objectives. It has argued that NG's powers within the New Roads and Street Works Act 1991 (NRSWA 1991) together with the powers already included with the DCO and the Electricity Act 1989 are sufficient to secure and deliver the scheme. Thus, NH argues, there is no compelling case for the compulsory acquisition of the rights sought by NG over the SRN.

Summary of Conclusions

4. In my view, the Articles 3, 4 and 30 of the draft DCO together with the powers held by NG pursuant to the Electricity Act 1989 provide "sufficient rights which achieve all of the matters set out in paragraph 2.6.1 of NPS EN-5.
5. Further, even with NH's proposed protective provisions in place, which retain the effect of ss 83 and 84 of NRSWA 1991, the continued ability to ensure transmission via the Scheme would be protected. In my view the 1991 Act provisions strike an appropriate balance between protection of both NG's interests and NH's interests in furtherance of the public interest. Given that both NG and NH operate in the public interest, I cannot see a rational basis for concluding that the NH protective provisions that seek the continued application of sections 83 and 84 of NRSWA 1991 should be omitted from the DCO since there is no basis for concluding that NH's functions and duties are somehow inferior to the functions and duties of NG.

The Legal Framework for Compulsory Acquisition

6. The legislative framework relating to the compulsory acquisition powers applicable to a DCO application is to be found in the Planning Act 2008 (the 2008 Act). Section 104(3) of the 2008 Act requires "the application" to be decided in accordance with any relevant NPS. The tests for whether to grant powers of compulsory acquisition are set by section 122(2) and (3) of the

2008 Act and include, in section 122(3), that there must be “a compelling case in the public interest”.

7. In ***R. (on the application of FCC Environment (UK) Ltd) v Secretary of State for Energy and Climate Change*** [2015] EWCA Civ 55 the Court concluded that where “the application” includes proposed powers of compulsory acquisition of land, in assessing whether there is a “compelling case in the public interest” pursuant to section 122(3), the decision-maker will have to make that assessment in accordance with the contents of any relevant NPS by virtue of section 104(3).

8. NPS EN-5 provides:

“2.6.1 In order to be lawfully able to install, inspect, maintain, repair, adjust, alter, replace or remove an electricity line (above or below ground), its related equipment (such as monopoles, pylons/transmission towers, transformers and cables), and/or its associated mitigation or enhancement schemes, applicants must:

- Own the land on, over, or under which the relevant activity is to take place; or
- Hold sufficient rights over or interests in that land (typically in the form of an easement);
or
- Have permission for the activity from the present owner or occupier of that land (typically in the form of a wayleave).

2.6.2 Where the applicant does not own or wish to own the land in question, it should try to reach a voluntary agreement giving it sufficient rights and/or permissions to undertake the relevant work.

2.6.3 As a last resort, where it does not succeed in reaching the agreement that it requires, the network company may, as part of its application to the Secretary of State, seek to acquire rights compulsorily over the land in question by means of a provision in the DCO.

2.6.4 In such cases (i.e. where the compulsory acquisition of rights is sought) permanent arrangements are strongly preferred over voluntary wayleaves (which could, for example, be terminable on notice by the landowner) in virtue of their greater reliability and economic efficiency and reflecting the importance of the relevant infrastructure to the government’s Clean Power and net zero goals.”

9. Thus, the NPS makes it clear that NG would need to either own the land, hold sufficient rights over or interests in that land (typically in the form of an easement), or have permission for the

activity from the present owner or occupier for that land (typically in the form of a wayleave) in order to

“be lawfully able to install, inspect, maintain, repair, adjust, alter, replace or remove an electricity line (above or below ground), its related equipment (such as monopoles, pylons/transmission towers, transformers and cables), and/or its associated mitigation or enhancement schemes.”

10. Several cases establish that a compelling case in the public interest for compulsory acquisition cannot be demonstrated where the scheme's objectives can be achieved without such acquisition. (*R v Secretary of State for Transport Ex p. De Rothschild* (1988) WL 622533, *Prest v Secretary of State for Wales* (1983) WL 215478, *Brown v Secretary of State for the Environment* (1980) 40 P. & C.R. 285, and *R (on the application of FCC Environment (UK) Ltd) v Secretary of State for Energy and Climate Change* [2015] EWCA Civ 55.
11. It follows that the approach that EN5 follows is a structured one. It requires the decision maker to proceed on the following structured basis:
 - a. Does NG have “sufficient rights” to be able to lawfully install, inspect, maintain, repair, adjust, alter, replace or remove an electricity line (above or below ground), its related equipment (such as monopoles, pylons/transmission towers, transformers and cables), and/or its associated mitigation or enhancement schemes?
 - b. If so, then no compelling case in the public interest for acquisition will exist since NG will already have “sufficient rights” for the purposes of NPS EN-5 paragraph 2.6.
 - c. Where it does not have sufficient rights, NG should seek to obtain sufficient rights by agreement
 - d. As a last resort, NG should seek to require rights compulsorily (EN-5 para 2.6.3).
 - e. Where it does seek compulsory acquisition of rights (i.e. where it does not have sufficient rights and where attempts to obtain sufficient rights by agreement have failed), permanent rights are to be preferred over rights which could be terminable due to their “greater reliability and economic efficiency and reflecting the importance of the relevant infrastructure to the government’s Clean Power and net zero goals.”

Sufficient Rights?

12. NH has identified in its representations that NG would have rights pursuant to the DCO itself and the Electricity Act 1989.

The Draft DCO Powers

13. Article 3(2)(a) and (b) of the latest draft DCO provides:

“(2) National Grid may

- (a) install and keep installed the authorised development;
- (b) remove or replace any electric line including pylons or poles that may require removal as part of the authorised development.”

14. Schedule 1 defines the authorised development as including the overhead lines which pass over the Strategic Road Network.

15. Article 4 (1) of the latest draft DCO provides:

“National Grid may at any time maintain the authorised development (excluding both the UKPN works and the UKOP protective works), except to the extent that this Order, or an agreement made under this Order, provides otherwise.”

16. “Maintain” is defined in Article 2 of the latest draft DCO as:

“maintain” includes inspect, repair, adjust, alter, dismantle, remove, clear, refurbish, paint, surface treat, decommission, improve, reconstruct or replace any part, but not remove, reconstruct or replace the whole, of the authorised development including through the use of robots, helicopters, drones, gadgets or similar devices either remotely controlled or autonomous, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement, and any derivative of “maintain” must be construed accordingly;

17. To go through the elements of EN-5 paragraph 2.6.1 as they relate to lines oversailing the SRN then, it can be seen that these powers provide statutory authority to “be lawfully able to install (Art 3(1)(a)), inspect (Art 4(1) and definition of maintain)), maintain (Art 4(1) and definition of maintain), repair (Art 4(1) and definition of maintain), adjust (Art 4(1) and definition of maintain), alter (Art 4(1) and definition of maintain), replace or remove an electricity line

(above or below ground) (Art 3(2)(b)). All of the elements identified in EN5 paragraph 2.6.1 are addressed by powers in the DCO.

18. Consequently, the only reasonable conclusion is that the draft DCO provides NG with statutory rights that meet every element of paragraph 2.6.1 of EN5 in relation to lines crossing the SRN. In my view, the statutory rights and authority conferred by the draft DCO in respect of lines passing over the SRN must be "sufficient rights" since they enable everything identified in paragraph 2.6.1 of EN5 to be done. The result is that there can be no compelling case in the public interest for the proposed compulsory acquisition of the easements that NG seeks. They simply do not need an easement to achieve the matters identified in EN5 paragraph 2.6.1 since they already have sufficient powers to do so.

19. In addition to these powers, the draft DCO contains further relevant powers in Article 30:

"(1) The undertaker may enter on and use so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development or for any other purpose ancillary to the authorised development and may use the subsoil or airspace for those purposes.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street."

20. These powers specifically provide NG with the permanent ability to use the airspace over any street within the Order Limits (which, as I understand it, includes the crossings of the SRN I am advising in relation to). It enables the use of that airspace specifically on the basis that no easement is acquired.

21. Street is defined in the draft DCO as "a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street." Under section 48(1) of the NRASWA 1991, a street means the whole or any part of any highway, road, lane, footway, alley or passage, any square or court, and any land laid out as a way whether it is for the time being formed as a way or not, irrespective of whether it is a thoroughfare.

22. The elements of the SRN over which NG proposes to place OHLs comprise a "highway".

23. The ownership of a highway authority is limited to as much of the actual soil of the street as is necessary to preserve and maintain it to the top two spits, as Denning LJ. said in ***Tithe Redemption Commission v Runcorn Urban District Council*** [1954] Ch. 383 at 407. A "spit" is a spade's depth. The statutory vesting "operates to vest in the highway authority a determinable fee simple in the surface of the land": per Arden LJ in ***R. (on the application of Smith) v Land Registry (Peterborough Office)*** [2010] EWCA Civ 200 at para.13.

24. In ***Tunbridge Wells Corp v Baird*** [1896] AC 434 at 442 Lord Herschell said:

"It seems to me that the vesting of the street vests in the urban authority such property and such property only as is necessary for the control, protection and maintenance of the street as a highway for public use."

25. In ***Southwark LBC v Transport for London*** [2018] UKSC 63 Lord Briggs commented on "the Baird principle", noting that in respect of a highway:

"[the] slice of the vertical plane included, of course, the surface of the road over which the public had highway rights, the subsoil immediately beneath it, to a depth sufficient to provide for its support and drainage, and a modest slice of the airspace above it sufficient to enable the public to use and enjoy it, and the responsible authority to maintain and repair it, and to supervise its safe operation."

26. Lord Briggs identified this as the "zone of ordinary use". Lord Briggs stated in Southwark at [10]:

"It is common ground that the zone of ordinary use is a flexible concept, the application of which may lead to different depths of subsoil and heights of airspace being vested in a highway authority, both as between different highways and even, over time, as affects a particular highway, according to differences or changes in the nature and intensity of its public use."

27. Thus, the SRN, as a highway, will comprise the surface of the SRN and a "modest slice of the airspace above it sufficient to enable the public to use and enjoy it, and the responsible authority to maintain and repair it, and to supervise its safe operation".

28. This is illustrated in the diagram below:

Over the Highway

Airspace forming part of Highway

HIGHWAY SURFACE

29. As a result of the *Southwark* case, the highway (and thus the street) includes the “modest slice of airspace”. An electric line that is installed and maintained in the airspace above the airspace which forms part of the highway would be installed in or across a highway. An electric line that is installed and maintained in the airspace above the “modest slice of airspace” that forms part of the highway would be installed over or across a highway.
30. As I have explained above, Article 30 provides a statutory right to “use so much of the subsoil of, or airspace **over**, any street within the Order limits as may be required for the purposes of the authorised development”. This provides a right to use the airspace above the modest slice of airspace which forms part of the highway. To the extent that there may be a concern that an electric line might pass within that modest slice and thus not fall within the scope of the draft Article 30, the wording could be amended to provide a right follows:
- “use so much of the subsoil of, or airspace **in**, over **or across**, any street within the Order limits as may be required for the purposes of the authorised development.” (emphasised text added as potential amendment to the current draft DCO text).
31. In my view, given the nature of the suite of statutory powers available to deliver the scheme, such an amendment is not required. Nevertheless, I cannot see that such an amendment would be objectionable given that it would simply replicate the effect of the powers which NG would obtain via the draft DCO and indeed already possesses pursuant to the Electricity Act 1989 as I explain further below.
32. On that basis, it is difficult indeed to see how it is necessary to acquire an easement to do the very thing that Article 30 authorises without such an acquisition.
33. In my view, no reasonable decision maker examining these provisions could conclude that the statutory rights and authority conferred by the draft DCO in respect of lines passing over the

SRN rights were not sufficient for the purposes of paragraph 2.6.1. Further, it would not be reasonable to conclude that there is a compelling case for the acquisition of an easement to achieve that which can already be achieved by virtue of the powers in the draft DCO.

Electricity Act 1989 Powers

34. In addition to the statutory authority and rights granted by the DCO itself, the provisions of the Electricity Act 1989 are also relevant.

35. Section 10(1) of the Electricity Act 1989 provides:

Schedule 3 to this Act (which provides for the compulsory acquisition of land) and Schedule 4 to this Act (which confers other powers and makes other provision) shall have effect—

- (a) in relation to the holder of a transmission licence or of an electricity system operator licence ; and
 - (b) to the extent that his licence so provides, in relation to an electricity distributor or any other licence holder;
- and references in those Schedules to a licence holder shall be construed accordingly.”

36. Schedule 4, paragraph 1(1) to the 1989 Act provides:

(1) Subject to the following provisions of this paragraph, for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, a licence holder may execute—

- (a) the following kinds of works, that is to say, installing under, **over, in,** on, along or **across** any **street** and from time to time inspecting, maintaining, adjusting, repairing, altering, replacing or removing—
 - (i) any electric lines or electrical plant; and
 - (ii) any structures for housing or covering any such lines or plant” (emphasis added)

This confers on electricity licence holders the power to install electric lines and electrical plant "under, over, in, on, along or across any street" dedicated to public use, with the consent of the street authority (such consent not to be unreasonably withheld). Paragraph 1(9) of Schedule 4 provides that "street" has the same meaning as in Part III of the New Roads and Street Works Act 1991 (see above).

The New Roads and Street Works Act 1991

37. The NRSWA 1991 establishes a regulatory framework for works executed in streets. Section 48(3) of the 1991 Act defines street works as works of specified kinds executed in a street in pursuance of either a statutory right or a street works licence. This provision makes clear that these are alternative legal bases for undertaking street works, not cumulative requirements. Section 105 of the 1991 Act also makes it clear that street works encompasses works in or over a street. I have set out above my view regarding the nature of a street and what it comprises.
38. The definition of statutory right in section 105(1) encompasses a right conferred by an enactment, whether expressed as a right, a power or otherwise, but explicitly excludes rights exercisable by virtue of a street works licence or street works permit. Thus, statutory rights and street work licences are distinct and mutually exclusive categories. The rights conferred by Articles 3 and 4 of the draft DCO (see above), are statutory rights for the purposes of the 1991 Act
39. Accordingly, with the DCO in place, NG would have statutory authority to undertake work in or over a street without a street works licence under the New Roads and Street Works Act 1991.

Conclusion on Sufficiency of Rights

40. In the light of the above, following the structured approach in EN5 section 2.6, the only reasonable conclusions is that with the DCO in place NG would have "sufficient rights" to be able to lawfully install, inspect, maintain, repair, adjust, alter, replace or remove an electricity line (above or below ground), its related equipment (such as monopoles, pylons/transmission towers, transformers and cables), and/or its associated mitigation or enhancement schemes.
41. Given that that is the case, no compelling case in the public interest for compulsory acquisition can exist since NG will already have "sufficient rights" for the purposes of NPS EN-5 paragraph 2.6.

Permanence of Rights

42. On that basis it is not necessary to go on to apply to EN5 paragraphs 2.6.2 and following, since these are only relevant where the rights will not be sufficient to meet the requirements of paragraph 2.6.1.
43. The points raised by NG arising from EN5 paragraph 2.6.4 are not applicable in the light of my conclusions above. Paragraph 2.6.4 only applies in circumstances where insufficient rights exist and where no agreement to obtain such rights has been concluded. That is not the case here as I have explained above.

44. The statutory rights and powers I have set out above (Article 3, 4 and 30 and the 1989 Act) are not akin to terminable rights acquired pursuant to a voluntary wayleave. They provide permanent statutory authority for all of the matters listed in paragraph 2.6.1 of EN5. They enable the scheme to come forward and be retained on a permanent basis in the national interest. They do so without the need for any compulsory acquisition of easements from NH.
45. However, NH seeks a modification of this position in the protective provisions that it wishes the DCO to include. In particular, paragraph 1(3) seeks the continued application of the powers and duties of NH pursuant to the NRSWA 1991, including those in sections 83 and 84 of that Act.

Section 83 of the NWSRA 1991

46. Section 83 of the NWSRA 1991 applies to works for road purposes other than major highway works. It provides:

(2) Where works to which this section applies are likely to affect apparatus in the street, the authority executing the works shall take all reasonably practicable steps—

(a) to give the person to whom the apparatus belongs reasonable facilities for monitoring the execution of the works, and

(b) to comply with any requirement made by him which is reasonably necessary for the protection of the apparatus or for securing access to it.

47. Thus, this section would provide NH with powers to undertake works that would affect NGs OHL subject to compliance with any requirement made by NG which is reasonably necessary for the protection of the OHL. Breach of any such requirement is a criminal offence (see section 83(3) of NWSRA 1991) Thus, if NG required no interruption to transmission during works, NH would have to ensure that there was no interruption in transmission on pain of commission of a criminal offence.

Section 84 of the NRSWA 1991

48. Section 84 of the NRSWA 1991 applies to “major highway works, major bridge works or major transport works”. It provides:

(1) Where an undertaker's apparatus in a street is or may be affected by major highway works, major bridge works or major transport works, the highway, bridge or transport authority concerned and the undertaker shall take such steps as are reasonably required—

(a) to identify any measures needing to be taken in relation to the apparatus in consequence of, or in order to facilitate, the execution of the authority's works,

- (b) to settle a specification of the necessary measures and determine by whom they are to be taken, and
 - (c) to co-ordinate the taking of those measures and the execution of the authority's works,
- so as to secure the efficient implementation of the necessary work and the avoidance of unnecessary delay.

49. The Secretary of State has issued for the purposes of this section a code of practice giving practical guidance as to the matters mentioned in subsection (1).
50. Section 84(3) provides for any dispute to be settled by way of arbitration proceedings.
51. The terms of any agreement or arbitration award are to be followed, and compensation is payable where they are not followed and a loss arises (see Section 84(4)).
52. Thus, again, this section would provide NH with powers to undertake works that would affect NGs OHL subject to agreement with NG or an Arbitrator's award in case of dispute.

The Rationale for NH's Protective Provisions

53. NH seeks the continued application of these powers pursuant to its statutory functions in relation to the SRN. They provide for a means by which NH could pursue changes to the SRN in the future that are considered to be consistent with its functions, powers and duties which it holds in the public interest.
54. The provisions strike a balance between the protection of NG's interests and those of NH. They do not allow for NH to undertake works that would interrupt transmission without NGs agreement or an arbitrator's award which determines that the interruption of supply. That provides sufficient permanence for NG but also allows for change in the future should that be required pursuant to NH's statutory functions, powers and duties.
55. In my view, it can be seen that these provisions strike a balance between protection of both NGs interests and NH's interests in furtherance of the public interest.
56. If these provisions were not retained, in essence it would have to be concluded that NGs functions should override the functions of NH such that NH's ability to make changes to the SRN in the future should be curtailed notwithstanding the protections to NGs interests that NRSWA 1991 provides. Given that both NG and NH operate in the public interest, I cannot see a rational basis for concluding that NG's functions are somehow more important than NH's. There is nothing to that effect in any National Policy Statement of which I am aware.

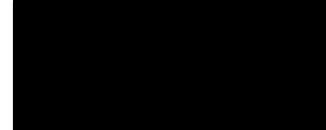
57. As a result, my view is that it is difficult to see how a decision maker could lawfully conclude that the NH protective provisions that seek the continued application of sections 83 and 84 of NWSRA 1991 should be omitted from the DCO.

Conclusion

58. In my view, the Articles 3, 4 and 30 of the draft DCO together with the powers held by NG pursuant to the Electricity Act 1989 provide "sufficient rights" which achieve all of the matters set out in paragraph 2.6.1 of NPS EN-5.

59. Further, even with NH's proposed protective provisions in place, which retain the effect of ss 83 and 84 of NRSWA 1991, the continued ability to ensure transmission via the Scheme would be protected. In my view the 1991 Act provisions strike an appropriate balance between protection of both NGs interests and NH's interests in furtherance of the public interest. Given that both NG and NH operate in the public interest, I cannot see a rational basis for concluding that the NH protective provisions that seek the continued application of sections 83 and 84 of NWSRA 1991 should be omitted from the DCO since there is no basis for concluding that NH's functions and duties are somehow inferior to the functions and duties of NG.

4th August 2026



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APPENDIX 4

N2T Deadline 8 Submission: Update on Traffic and Transport Issues

ExA Library ID	Name	Matter	NG's Deadline 7 Response	NH's Deadline 8 response
REP6-155	NH	TRAFFIC AND TRANSPORT – CONSTRUCTION IMPACTS Proposed Changes to SRN Roads Physical changes to the SRN at A12 Holton St. Mary, A120 Bentley Road and the A120 at Coggeshall have been agreed by NH. However, agreement to the proposed amendments to Copdock Roundabout (A14 J55) are subject to the satisfactory completion of a Road Safety Audit 1 ("RSA1"), which has not yet been undertaken. This is requested to assess the safety impact of the changes. NH expects to receive the draft RSA1 brief imminently from the Applicant. A Walking, Cycling, and Horse-riding Assessment and Reviews (WCHAR) is needed at any point on the SRN where changes are proposed, in accordance with DMRB. WCHARs, or else an exemption submission, are required for all the locations where physical amendments to the road layout are proposed. These have not yet been received.	As a result of the junction modelling, additional mitigation was identified at the Copdock Roundabout (A14 junction 55) as detailed within 7.11 Transport Assessment [Revision B]. The preliminary design of this mitigation has been prepared by the Main Works Contractor and the Stage 1 RSA Brief will be issued to NH by Deadline 7 or shortly thereafter. A Stage 1 Road Safety Audit site visit is to be arranged and it has been agreed that representatives from NH and Suffolk County Council will be in attendance with the Applicant. Walking, Cycling, and Horse-riding Assessment and Reviews (WCHARs) have been prepared at any point on the SRN where changes are proposed, in accordance with DMRB GG 142. Where a WCHAR is not deemed required, an exemption note has been prepared. These documents have now been issued to NH for review and acceptance. The Applicant notes NH's comments on the review of junctions located on the	The RSA1 Brief for A14 Junction 55 is still awaited. It should be noted that approval of the mitigation design is subject to satisfactory completion of the RSA1. NH acknowledges receipt of the WCHARs/Exemptions and is currently reviewing these. Further information in support of the trip generation, distribution and assignment was provided by the Applicant before Deadline 7, although this was not complete in respect of the calculations. Further information is required (and has been requested) in order to understand/verify the traffic impact calculations of the DCO on the SRN. In view of NH's remaining concerns about the modelling, NH proposed an alternative approach at Deadline 7, involving construction vehicle caps at sensitive locations and greater controls to ensure the safe operation of the SRN. There are also remaining concerns about the A120 Galleys Corner Roundabout, for which the necessary microsimulation modelling has not been able to commence – as well as additional modelling results that have not yet been provided

ExA Library ID	Name	Matter	NG's Deadline 7 Response	NH's Deadline 8 response
		The trip distribution/assignment for the construction traffic is yet to be fully understood and agreed, and therefore so is the modelling. As a consequence, there may be required mitigations that are not yet known. These potentially unknown changes to the SRN are to be agreed, as required.	SRN undertaken for the Project. The Applicant is committed to continue to engage with NH to gain approval of the modelling undertaken and the associated mitigation measures recommended through this assessment. The Applicant has included provisions in 3.1 Draft DCO [Revision G] including Protective Provisions, to enable mitigation to the SRN to be agreed and implemented. Meetings were held between the Applicant and NH in March and July 2026 to discuss the trip generation, distribution and assignment applied to SRN junctions modelled by the Project. The Applicant maintains that the construction trip generation, distribution and assignment set out in 7.11 Transport Assessment [Revision B] are robust. To provide further clarification and assurance, the Applicant has supplied NH with a more detailed explanation of the methodology and data underpinning the assessment. In addition, the Applicant has committed to providing to NH by Deadline 7 supporting calculations underpinning the trip generation, trip distribution and trip assignment assumptions.	at some junctions, including (but not limited to) A12 J25, M25 J30, and the ASDA Roundabout. The need for further mitigation required throughout the study area will be addressed upon the completion of the modelling.
REP6-155	NH	Assessment Scope NH has identified three junctions which it considers may be affected	The study area comprises all roads along the PARs, wider road network (SRN/MRN) that might experience	The potential issues concerning the 3 additional junctions became apparent during a presentation

ExA Library ID	Name	Matter	NG's Deadline 7 Response	NH's Deadline 8 response
		by HGV routes from quarries to the construction sites and which have not been assessed by the Applicant. Although M25 J30 is include in the assessment scope, NH has questioned why M25 J28, M25 J29 and M11 J8 have not been assessed. This has been discussed with the Applicant, and a response is expected shortly. The trip distribution/ assignment for the construction traffic is yet to be fully understood and agreed, and therefore the scope of the assessment may need to be expanded to fully capture the extents of the impact of the project on the SRN.	changes in traffic patterns resulting from the Project, PRoW and WCH routes that interact with the haul roads within the Order Limits and the PARs as presented within 7.11 Transport Assessment Chapter 2 – Project Description [Revision B]. The Study Area is considered appropriate for the assessment. National Grid presented an early draft of the Transport Assessment (7.11 Transport Assessment [Revision B]) to the LHAs and NH at the Thematic Group Meeting in January 2025 and again ran through the methodology of junction sifting process, junction assessment methodology and cumulative assessment. The selection methodology and list of junctions deemed sensitive through the sifting process was provided for review by LHA and NH at the thematic group meeting held in April 2024, and feedback was used to refine the final selection. As a result of this engagement, several additional junctions were incorporated into the assessment scope, e.g. M25 J30 which does not connect to a Primary Access Route. The Applicant set out in a meeting with NH on 13th January 2026 its justification	concerning trip generation and assignment by the Applicant on 31 March 2026. This suggested that the 3 junctions identified may be adversely impacted by the proposed development. NH raised the issue following a more detailed review of the presentation material at a meeting with the Applicant on 18 May 2026 and the Applicant agreed to provide a written response following an investigation. This was received by NH on 10 July 2026, with further clarifications provided on 16 July 2026, and is currently being reviewed It is noted that the trip generation, distribution and assignment are still not fully understood by NH and therefore the scope of junctions to be modelled is not agreed.

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			for why it does not consider necessary to model any additional junctions, except for the A12 J25, given the cancellation of the A12 Chelmsford to A120 Widening Scheme in Essex. The Applicant held meetings with NH in May and July 2026 where M11 Junction 8, M25 Junction 28, and M25 Junction 29 were discussed. The Applicant will submit to NH by Deadline 7 supporting information concerning these junctions, which is expected to address NH's outstanding queries.	
REP6-155	NH	Construction Traffic Volumes Whilst NH is broadly content with the logic behind the methodology which the Applicant has employed to determine the construction trip generation, distribution and assignment, it has not yet had visibility of the detailed calculations that were made and therefore it is still not possible for NH to agree with the forecast traffic flows at SRN junctions, nor whether the proposed mitigation is appropriate. NH has requested the detailed shapefiles and spreadsheet calculations from the Applicant to enable an understanding of how the forecast traffic volumes have been	The Applicant notes NH's comments on the review of junctions located on the SRN undertaken for the Project. A meeting was held to discuss the trip generation and junction modelling with NH on 31st March. Following the meeting, the Applicant provided NH with a supporting detail on the trip generation, distribution and assignment including traffic flow diagrams for its review. A subsequent supporting methodology note on construction traffic assignment was prepared and issued to NH in June 2026 to explain in greater detail the construction traffic routing strategy, traffic distribution and network assignment. The Applicant has also committed to providing	Whilst the Applicant provided information supporting the methodology for the trip generation, trip distribution and trip assignment following the meeting on 31 March, it did not fully resolve NH's queries about the calculations underpinning the Applicant's methodology. The supporting calculations have still not been provided. Therefore, NH proposed an alternative approach at Deadline 7 in its submission REP7-561], involving construction vehicle caps at sensitive locations and greater controls to ensure the safe operation of the SRN.

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		derived and it is understood that the Applicant has agreed to provide them shortly.	to NH by Deadline 7 the supporting calculations that underpinned the trip generation, trip distribution and trip assignment assumptions.	
REP6-155	NH	Junction Modelling As the demand forecasts (trip generation, distribution and assignment) have not yet been agreed, NH has not undertaken a detailed review of the forecast results of the modelled junctions as these are subject to change. However, a review of the baseline situation has highlighted several sensitive locations on the SRN where additional congestion and queuing caused by construction traffic associated with the project may have unacceptable safety and/or capacity implications. In previous submissions, NH strongly recommended a microsimulation model is applied to the following locations collectively to ensure that the implications on the SRN are fully understood: • A120/Long Green/B11018/Cressing Road junction (Galleys Corner) • A120/A131/B1256 (Marks Farm) Roundabout • B1018/Millennium Way	The Applicant notes NH's position on the status of its review of junctions located on the SRN undertaken for the Project,. The Applicant has agreed with NH that VISSIM modelling should be undertaken as a sensitivity check for Site 48: A120/Long Green/B11018/Cressing Road junction (Galleys Corner) and the A120/A131/B1256 (Marks Farm) and B1018/Millennium Way roundabouts. National Grid has provided modelling inputs to enable NH's consultants to run the model. The Applicant anticipates that the VISSIM modelling will be completed by the end of August 2026. The Applicant is modelling the A12 Junction 25 and expects to share the results with NH by early August 2025. 7.3 Outline Construction Traffic Management Plan [Revision F] section 5.9.10 sets out that the Main Works Contractor(s) will develop, as part of the final (detailed) CTMP to be prepared by the Main Works Contractor(s), a monitoring and mitigation framework for SRN and local highway junctions. This	NH received the modelling inputs required to undertake the Galley's Corner VISSIM modelling on 28 July 2026, after several exchanges of emails regarding queries on the first submission of inputs on 16 July 2026. However, AECOM (acting on behalf of NH) requested further information on 29 July 2026 concerning the breakdown of committed development flows as they identified some concerns with the figures. . Once this information is received and the flows are agreed, the VISSIM modelling can commence. The earliest completion date for the modelling, which is expected to take 5 weeks, is therefore w/c 7 September 2026. NH looks forward to receiving the results of the A12 J25 modelling. NH welcomes the inclusion of a monitor and manage proposal in its updated oCTMP [Revision F] submitted at Deadline 6 although, as noted in its submission at Deadline 7 [REP7-561], NH considers that further measures are required. NH therefore set out its proposals for a cap on construction vehicles at sensitive locations and increased control measures.

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		NH became aware shortly before ISH2 on 1/5/26 that a VISSIM model had been partially developed for NH in this location and NH proposed at the ISH that the Applicant could use this model to achieve outputs more cost-effectively and more quickly. This approach was subsequently agreed with the Applicant and information is being provided to enable the model to be run. It is expected that the modelling will be able to commence imminently, with results available in early August (subject to the agreement of the trip distribution and assignment). This is a particularly sensitive location on SRN that already experiences congestion. A particular concern is if eastbound queuing at Galleys Corner is likely to extend to the on-slips of the next junction on the A120 to the west. The VISSIM model will provide clarity on this matter where the local junction modelling cannot. A12 Junction 25, another sensitive location, was not modelled originally as the Applicant had assumed that the junction would be improved as part of the proposed A12 major scheme. The scheme was	framework will include a toolkit (menu) of specific mitigation measures – these are already outlined in the Outline CTMP – to be brought forwards if predefined conditions (criteria) are met. Compliance with the Outline CTMP will be secured through Requirement 4 in 3.1 Draft DCO [Revision G] requiring the submission and approval of a final (detailed) CTMP substantially in accordance with the certified Outline CTMP.	

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		cancelled by the Government in Autumn 2025 and the Applicant has therefore agreed to model the junction using Arcady. Results are expected soon. Until the modelling is completed it is not possible to determine the degree of impact in this location and whether mitigation is required.		
REP6-155	NH	CONSTRUCTION MANAGEMENT DOCUMENTS An updated Outline Construction Traffic Management Plan ("oCTMP") was submitted at Deadline 5. As noted previously by NH, mitigation measures are proposed at a number of SRN locations. As explained above, it is not possible, however, to agree that these are appropriate or adequate until the modelling is agreed with NH. The Applicant has however indicated that the oCTMP will be updated to include a Monitor and Manage strategy, enabling mitigation to be brought forward as required in agreement with the relevant Highway Authority. NH supports the principle of this approach but this detail does not yet appear in the oCTMP. Once the oCTMP is updated NH will be able	The Applicant welcomes NH's support for the monitor and manage strategy and confirms that a commitment to develop that strategy has been incorporated within the Outline CTMP. 7.3 Outline Construction Traffic Management Plan [Revision F] sections 5.4.20 and 5.4.21 include detail on the management of construction vehicle trips through the three-month look ahead. 7.3 Outline Construction Traffic Management Plan [Revision F] section 5.9.10 sets out that the Main Works Contractor(s) will develop, as part of the final (detailed) CTMP to be prepared by the Main Works Contractor(s), a monitoring and mitigation framework for SRN and local highway junctions. This framework will include a toolkit (menu) of specific mitigation measures – these are already outlined in the Outline CTMP – to be brought forwards if predefined	NH welcomes the inclusion of a monitor and manage proposal in its updated oCTMP [Revision F] submitted at Deadline 6 although, as noted in its submission at Deadline 7 [REP7-561], it considers that further measures are required. NH therefore set out its proposals for a cap on construction vehicles and increased control measures.

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		to confirm its position on this proposal at Deadline 7.	conditions (criteria) are met. Compliance with the Outline CTMP will be secured through Requirement 4 in 3.1 Draft DCO [Revision G] requiring the submission and approval of a final (detailed) CTMP substantially in accordance with the certified Outline CTMP.	