

SCHEDULE 10

Protective provisions

PART 18

For the protection of local highway authorities

236. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the relevant local highway authority.

237. In this Part of this Schedule—

“Consents” means approvals, consents, licences, permissions, or registrations;

“RSA” or “Road Safety Audit” means a review of the proposed design or any works and any road safety impacts carried out in accordance with the Design Manual for Roads and Bridges or such other standard as the undertaker and the relevant local highway authority may agree;

“highway” means a highway vested in or maintainable by the relevant local highway authority as highway authority under the 1980 Act and this definition shall include any bridge or structure carrying a highway;

“relevant local highway authority” means in relation to highways within Cheshire West and Chester, Cheshire West and Chester Council, and in relation to highways in Flintshire, Flintshire County Council

“specified work” means the works under the Order to create new, permanent junctions to the public highway and the installation of the pipeline in or under the highway where that requires breaking open of the surface of the highway.

Highway condition and highway assets surveys

238.—(1) The undertaker will notify the of relevant local highway authority -

- (a) of the anticipated date of commencement of any Works to be undertaken under this Order; and
- (b) of the anticipated construction programme and date of completion of the authorised development;

not less than 3 months prior to that anticipated date of commencement of any Works to be undertaken under this Order.

(2) The undertaker and relevant local highway authority may agree that the relevant local highway authority will procure the highway condition surveys required under this Part of this Schedule at the cost of the undertaker.

(3) The undertaker will agree a proposed scope with the relevant local highway authority setting out the number (having regard to the construction programme), content and format of the highway condition surveys no later than 4 weeks after notification under sub- paragraph (1). If the undertaker fails to provide a highway condition survey or does not provide the relevant local highway authority with sufficient time to undertake a highway condition survey prior to any Works being undertaken pursuant to the Order then in default the last highway condition survey undertaken by the relevant local highway authority will amount to the baseline condition of the relevant highway and/or highway asset.

(4) A final highway condition survey must be procured by the undertaker within 28 days of the relevant local highway authority being notified by the undertaker that the construction of the authorised development is complete.

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(5) Copies of any highway condition survey carried out in accordance with this paragraph must be provided to the relevant local highway authority by the undertaker within 10 working days of the completion of the relevant survey.

HGV route remediation

239.—(1) The undertaker must maintain and provide to the relevant local highway authority at 3 month intervals from the date of any Works being undertaken under this Order until the authorised development is complete, records of the number of HGVs using the highway identified in paragraph 238(2) and/ or any amendments thereto to access the authorised development and details of which route such HGVs used.

(2) The relevant local highway authority will, having regard to the highway condition surveys, identify any need for remediation of the highway on the highway identified in paragraph 238(3) and/ or any amendments made thereto.

(3) Where a need for remediation works or measures is identified under sub-paragraph (1), the relevant local highway authority must prepare a schedule of the works or measures required and of the cost of the delivery of those works or measures identified. For the avoidance of doubt, the reasonable cost of reviewing the highway condition surveys and preparing the schedule of works will be met by the undertaker.

(4) Upon receipt of the schedule of works identified in paragraph (2) and/or any amendments made thereto, the undertaker will apply for a licence from the relevant local highway authority to undertake the remediation works to the highway and must undertake these works within 3 months of that licence being granted. The cost of the licence and relevant approvals will be paid by the undertaker to the relevant local highway authority.

Specified work

240.—(1) The undertaker will allow and facilitate an appropriately qualified officer of the relevant local highway authority to participate in the design process for any Work authorised by this Order which involves a specified work and/or any other Work to the local highway network required pursuant to this Order, and will have reasonable regard to any views of that officer in finalising the detailed design of that Work, provided always that any such view shared by the officer will not be an instruction, requirement or authorisation under this Order.

(2) Any officer of the relevant local highway authority duly appointed for the purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the authorised development which—

- (a) is in, on, over or under any highway; or
- (b) which may affect any highway;

during the carrying out of the Work, and the undertaker will give to such officer all reasonable facilities for such inspection (subject to any reasonable adjustments necessary for the safety of such officer) and, if the officer is of the opinion that the construction of the Work poses danger to any highway or to any property of the relevant local highway authority or danger to persons or vehicles or other property in relation to which the relevant local highway authority might be liable on, in, over or under any highway, the undertaker will adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway or persons or vehicles or other property aforesaid.

(3) Any officer of the relevant local highway authority exercising the right to inspect works under sub-paragraph (1) must comply with all reasonable health and safety requirements and instructions of the undertaker in doing so.

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(4) The undertaker must, if reasonably required by the relevant local highway authority, provide and maintain during such time as the undertaker may occupy any part of a highway for the purpose of the construction of any part of the authorised development, temporary ramps for vehicular or pedestrian traffic and any other traffic measures required to protect the safety of road users in accordance with chapter 8 of the Traffic Signs Manual and the Safety at Street Works and Road Works A Code of Practice as may be necessary.

241.—(1) Where, under this Order, any street works require to be undertaken to the reasonable satisfaction of the local highway authority, this paragraph will apply.

(2) The relevant local highway authority will, as soon as reasonably practicable following the receipt of notice from the undertaker that it considers any street works to which this paragraph applies to be complete, carry out an inspection of such street works.

(3) The relevant local highway authority will confirm when any street works have been completed to their reasonable satisfaction in writing and will set out in such confirmation the date on which the works were last inspected to establish such reasonable satisfaction. For the period of 24 months from the date of last inspection as stated in the confirmation of reasonable satisfaction, the undertaker will be liable to pay to the relevant local highway authority the reasonable costs of repairing or rectifying any defect in the highway which, in the opinion of the relevant local highway authority (acting reasonably) was caused by or is attributable to the carrying out of street works by the undertaker.

(4) The reasonable costs set out in paragraph (3) may include the costs of the time of the relevant local highway authority's officers and employees incurred in the remediation or rectification of a defect as well as the cost of the remediation or repair, whether carried out by the local highway authority or on their instruction. The costs payable under paragraph (3) must be paid by the undertaker in full within 30 days of receipt of an invoice for such costs provided that such invoice includes a breakdown of the charges incurred and is accompanied by copies of any invoices received by the relevant local highway authority for works undertaken to remedy or repair the defect. Disputes.

(5) Any difference arising between the undertaker and the relevant local highway authority under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) will be resolved by arbitration under article 47 (arbitration).