

Technical Note on Bond Sum

1. Part 4 of Schedule 8 to the draft Order contains agreed protective provisions for the benefit of Highways England.

2. Paragraph 29 (Interpretation) includes a number of definitions, including:

“HE Works” is defined as: “all the authorised works and associated works relating to the construction, maintenance and operation of a level crossing over the A21 at Robertsbridge, East Sussex and required by an Order made under the Level Crossing Act and any works by or on behalf of the Company that are in, on or under the trunk road or other Highways England land, including, without limitation, works to form or layout means of access to the trunk road and works to the trunk road highway drainage;”

“the bond sum” is defined as “the sum equal to 200% of the cost of the carrying out the HE works (to include all costs plus any commuted sum) or such other sum agreed between the Company and Highways England”.

3. Paragraph 39 (security) provides that:

“(1) The HE works must not commence until— (a) the HE works are secured by a bond from a bondsman first approved by Highways England substantially in the form of the draft bond attached at Annex 1 or such other form that may be agreed between the Company and Highways England to indemnify Highways England against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the Company in respect of the HE works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; and (b) prior to the commencement of the HE works the Company must provide the cash surety which may be utilised by Highways England in the event of the Company failing to meet its obligations to make payments under paragraph 34 or to carry out works the need for which arises from a breach of one or more of the obligations of the Company under the provisions of this Part of this Schedule (which must for the avoidance of doubt be a single cash surety for the entire value of the HE works).

(2) The bond sum and the cash surety must be progressively reduced as follows—

(a) within 20 working days of the issue of the provisional certificate pursuant to paragraph 35(1) Highways England must release the bond provider from its obligations in respect of 80% of the bond sum save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date in which case Highways England will retain a sufficient sum to meet all necessary costs to settle the claim or claims; and

(b) within 20 working days of the issue of the final certificate pursuant to paragraph 37 Highways England must in writing release the bond provider from its obligations in respect of all remaining liability and release the remainder of the cash security to the Company save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date in which case Highways England will retain a sufficient sum to meet all necessary costs to settle the claim or claims.

(3) Any sums payable to Highways England pursuant to these protective provisions shall be reduced by an amount equivalent to such sums as are payable by the Company to Highways England or the Secretary of State pursuant to the indemnity and any other arrangements for the reimbursement of the costs of Highways England and/or the Secretary of State for Transport that are required for compliance with the discharge of planning conditions relevant

to the authorised works pursuant to Rother District Council's grant of planning permission reference RR/2014/1."

4. It is apparent from the above that the Bond Sum is not a specific figure. Rather, it is to be assessed at the appropriate time and, as both the Bond Sum and cash surety cover the same risk, it will be either 200% of the HE Works, as defined, **or** such different figure as is agreed between the parties subject to the qualifications in paragraphs (2) and (3) of paragraph 39.
5. The purpose of the Bond is to provide security for HE primarily in respect of initial construction works. Thus, sub-paragraph (2) provides for a progressive reduction in the amounts of HE's security. Immediately following grant of the provisional certificate of construction, the amount reduces by 80%, recognising that the costs to HE of having to remove the actual level crossing and associated infrastructure are but a small proportion of the overall works within the highway land and, once the final certificate is provided the requirement falls away in its entirety (subject of course to any outstanding claims).
6. The qualification in paragraph (3) prevents RVR being obliged to provide security under both the protective provisions and by way of the indemnity insurance requirements from which Highways England benefits from under the planning conditions.
7. On the basis that no other arrangements are agreed with HE nearer the time, the figure to be secured would be 200% of the HE Works. The total cost of the level crossing and associated highway works is estimated to be £171,000 (as per Appendix D to the Arup Options Report), to which RVR has added an estimated £100,000 for costs associated with additional re-surfacing works and additional works to the adjacent RVR embankment (as per the updated Estimate of Costs (INQ/012)), making a total value of approximately £271,000 for the HE Works as a whole, including all level crossing infrastructure, protective equipment and barriers etc. On this conservative assumption, the value of the bond would be 200% x £271,000, or £542,000.
8. We are advised that the cost of arranging a bond in this amount is a matter for negotiation and "shopping around" for the best price, which may include many different factors, including whether there are any personal guarantees available in respect of all or part of it. As a rule of thumb, it may be anywhere between 0.5% and 12% of the sum to be insured.
9. RVR would expect to secure such security at the lower end of the price range. However, for the purposes of this note, a short-term bond in the sum of £542,000 at a premium of 0.5% may be expected to cost £2,710. At the higher end of the range, a premium of 12% would cost circa £65,040.

12 July 2021