
**VOLUME 6 DEPARTMENTAL
STANDARDS AND
ADVICE NOTES ON
CONTRACT
DOCUMENTATION AND
SITE SUPERVISION**

SECTION 2 ADVICE NOTES

PART 2

SA 10/01

**THE NEW ROADS & STREET WORKS
ACT 1991 - DIVERSIONARY WORKS**

SUMMARY

This Advice Note provides guidance for the implementation of Section 84 (England and Wales) and Section 143 (Scotland) works of the New Roads and Street Works Act 1991 (NRSWA) and the code of practice Measures Necessary Where Apparatus is Affected by Major Works (Diversionary Works) 1992 (CoP).

INSTRUCTIONS FOR USE

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1. Insert SA 10/01 into Volume 6, Section 2, Part 2.
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THE HIGHWAYS AGENCY



SCOTTISH EXECUTIVE DEVELOPMENT DEPARTMENT



THE NATIONAL ASSEMBLY FOR WALES
CYNULLIAD CENEDLAETHOL CYMRU

The New Roads & Street Works Act 1991 - Diversionary Works

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REGISTRATION OF AMENDMENTS

Amend No	Page No	Signature & Date of incorporation of amendments	Amend No	Page No	Signature & Date of incorporation of amendments

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Amend No	Page No	Signature & Date of incorporation of amendments	Amend No	Page No	Signature & Date of incorporation of amendments

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DEFINITIONS

Allowable Cost	Means all reasonable costs of the measures needed to be taken for the purpose of diversionary works as defined in Regulation 2(2) of both The Street Works (Sharing of Cost of Works) Regulations 1992 and The Street Works (Sharing of Cost of Works) (England) Regulations 2000 and further outlined in Appendix C4 of the CoP. Allowable Costs do not include Preliminary Planning and Liaison; Determining Location of Apparatus; Preparing Initial Sets of Plans and Estimates; Financing Charges; and Work on Undertaker's apparatus placed in the highways or road after the Official Notice is given. Such costs shall be borne by the Undertaker.	OO	Overseeing Organisation (under the NRSWA the OO means the highway authority)
		OO Agent	The Overseeing Organisation's appointed representative. This may include such persons as the Engineer under ICE contracts, the Project Manager under ECC contracts, the Employer's Agent under OO D&B contracts, the Department's Agent, the Department's Representative under OO DBFO contracts, Super Agents, Maintaining Agents or Trunk Road Agents for maintenance contracts.
		NRSWA	New Roads And Street Works Act 1991 and amendments.
		PS	The Overseeing Organisation's Project Sponsor (as defined in HM Treasury Procurement Guidance No 1: Essential Requirements for Construction Procurement).
CoP	Code of practice "Measures Necessary Where Apparatus Is Affected by Major Works (Diversionary Works) 1992"		
C1	All 'C' numbered references in the text of this note refer to Appendix C of the CoP, "Procedures for Necessary Measures in Relation to Undertaker's Apparatus".	Undertaker	A body or person entitled by virtue of a statutory right or street works licence to undertake street works (England and Wales) or road works (Scotland) in accordance with the NRSWA.
C3 budget estimate	Refers to draft scheme and budget estimates as defined in subsection C3 of Appendix C of the CoP.		
C4 detailed estimate	Refers to final scheme and detailed estimates as defined in subsection C4 of Appendix C of the CoP.		

1. INTRODUCTION

1.1 Principles

1.1.1 This guidance forms part of Volume 6 of the Manual of Contract Documents for Highway Works (MCHW) and is prepared for the implementation of Section 84 (England and Wales) and Section 143 (Scotland) works of the New Roads and Street Works Act 1991 (NRSWA) and the code of practice “Measures Necessary Where Apparatus is Affected by Major Works (Diversionary Works) 1992” (CoP). The NRSWA came into force on 1 January 1993, superseding the Public Utilities Street Works Act, 1950. It intended to create a new era of co-operation and liaison between highway, bridge and transport authorities, and Undertakers. Its aim is to minimise the cost and inconvenience to the other’s property caused by construction and maintenance work. To encourage this attitude a cost sharing arrangement was introduced that took account of the benefit that the Undertakers derived from being able to re-locate their apparatus into the footway or verge rather than the carriageway after the diversion.

1.1.2 The NRSWA empowers the Secretary of State (England), the National Assembly for Wales (NAW) and the Scottish Ministers (Scotland) (SoS) to issue or approve codes of practice giving practical guidance on matters and steps to be taken by the OO and Undertaker to discharge the above duties and also to make regulations as to how the Allowable Costs for the necessary works will be borne by the parties concerned. Practical guidance is provided in the CoP which incorporates the cost sharing requirements of the “The Street Works (Sharing of Costs of Works) Regulations 1992” and “The Street Works (Sharing of Costs of Works) (England) Regulations 2000”.

1.1.3 This guidance has been produced in consultation with the National Joint Utilities Group (NJUG). NJUG, representing all its membership, has agreed to follow the procedures embodied in this guidance during the implementation of diversionary works.

Formed in 1977, NJUG linked up with the Highway Authorities in 1985 to assist the SoS in arriving at proposals for new street works legislation through the Highway Authorities and Utilities Committee (HAUC). NJUG work together with the Highway Authorities (through HAUC) to advise the SoS on issues relating to street works legislation, monitoring the effectiveness of legislation, providing guidance and a forum for matters of mutual interest. NJUG’s mandate is to promote the interests of and seek to influence the issues facing the main utilities in street works and other relevant matters and to promulgate best practice.

NJUG’s activities have continued to concentrate on legislative change and implementation of the NRSWA remains the main focus of NJUG’s activities.

1.1.4 This guidance does not cover Northern Ireland. A separate document (Volume 6, Section 2, Part 3, SA 11/01) is available for use in Northern Ireland.

1.1.5 The four major guiding principles which are embodied in the CoP are:

- (a) There is to be a general presumption against moving apparatus, other than as set out in the CoP;
- (b) Total costs should be minimised consistent with good practice, regardless of who has to meet the costs;

- (c) Staff must work together to obtain the optimum solution rather than seeking to protect only the interest of their own organisation; and
- (d) All parties must acknowledge that it will sometimes be right to accept some detriment to their own interests in the overall interest.

1.1.6 The following sections address where the NRSWA and CoP apply and how this may be tested by the PS. The underlying principles of cost sharing are also explained to promote an understanding of what and when the OO should pay and when contributions from Undertakers may be realised.

1.1.7 It is the intention of the OO to instigate and maintain positive dialogue with all Undertakers affected by diversionary works to optimise the completion of any necessary works. The OO believe that close liaison and open discussions will help achieve a positive outcome for both parties and are committed to achieving this aim.

1.2 Application Of The NRSWA And CoP

1.2.1 The fundamental question to be asked by the PS is whether the provisions of the NRSWA and CoP apply and if they do not, what action must be taken instead.

1.2.2 The CoP applies to major highway works (major works for road purposes in Scotland) which affect Undertaker's apparatus laid in a maintainable highway (or public road in Scotland) by virtue of a statutory right. Maintainable highways in England and Wales and public roads in Scotland both include the carriageway, verge and footway.

1.2.3 The CoP applies to pipes, ducts, cables and other apparatus in the maintainable highway or public road as well as to overhead lines and other apparatus on or above ground, provided they are

within the boundary of the maintainable highway or public road. The CoP also applies to any necessary off site works.

1.2.4 Subsequently the CoP does not apply to works which are not in a maintainable highway (England and Wales) or public road (Scotland). Areas outside of the highway or road are often referred to as greenfield. A greenfield area is an area which is not a maintainable highway (England and Wales) or public road (Scotland). The transition from a maintainable highway or public road into a greenfield area is at the boundary of the maintainable highway or public road.

1.2.5 Consequently the applicability of the CoP must be tested in two ways:

- (a) are the works **major highway works** (in accordance with section 86(3) (England and Wales) of the NRSWA) or **major works for road purposes** (in accordance with section 145(3) (Scotland) of the NRWSA); and
- (b) are the works in a **maintainable highway** (England and Wales) or **public road** (Scotland).

Both these conditions must be satisfied to apply the NRSWA and CoP provisions. Hereafter highway shall mean **maintainable highway** (England and Wales) and road shall mean **public road** (Scotland).

1.2.6 The definition of 'major highway works' is given in section 86(3) of the NRSWA and for ease of reference the definition states:

"86(3) In this Part "major highway works" means works of any of the following descriptions executed by the highway authority in relation to a highway which consists of or includes a carriageway –

- (a) *reconstruction or widening of the highway,*

- (b) works carried out in exercise of the powers conferred by section 64 of the Highways Act 1980 (dual carriageways and roundabouts),
- (c) substantial alteration of the level of the highway,
- (d) provision, alteration of the position or width, or substantial alteration in the level of a carriageway, footway or cycle track in the highway,
- (e) the construction or removal of a road hump within the meaning of section 90F of the Highways Act 1980,
- (f) works carried out in exercise of the powers conferred by section 184 of the Highways Act 1980 (vehicle crossings over footways and verges),
- (g) provision of a cattle-grid in the highway or works ancillary thereto, or
- (h) tunnelling or boring under the highway.”
- (d) the construction or removal of a road hump within the meaning of section 40 of the Roads (Scotland) Act 1984,
- (e) works carried out in exercise of the powers conferred by section 63 of the Roads (Scotland) Act 1984 (new access over verges and footways),
- (f) provision of a cattle-grid in the road or works ancillary thereto, or
- (g) tunnelling or boring under the road.”

1.2.8 Annex 1 contains illustrated examples of how the CoP applies to major highway and road works.

1.2.9 The provisions of sections 85 and 143 of the NRSWA and the CoP apply where apparatus in a highway or a road needs to be diverted because it is affected by major highway or road works. Where the apparatus requiring diversion is not laid in a highway or road, but is for example, in a greenfield area, the position is dependent on terms agreed between the OO and the Undertaker and not the NRSWA and the CoP. Accordingly the total costs of the diversionary works will be due to the Undertaker upon completion of those works unless a payment schedule has been agreed in accordance with 1.2.10 below.

1.2.7 The definition of ‘major works for road purposes’ is given in section 145(3) of the NRSWA and for ease of reference the definition states:

“145(3) In this part “major works for road purposes” means works of any of the following descriptions executed by the roads authority in relation to a road which consists of or includes a carriageway –

- (a) reconstruction or widening of the road,
- (b) substantial alteration of the level of the road,
- (c) provision, alteration of the position or width, or substantial alteration in the level of a carriageway, footpath or cycle track in the road,

Nevertheless, Undertakers recognise that the procedures for dealing with diversions of apparatus laid in highways and roads might be applied usefully to greenfield areas subject to the OO meeting the total costs. All elements of costs for apparatus in highways and roads will apply in greenfield areas including those referred to in sections 96 and 155 of the NRSWA.

Deferment of renewal will not be taken into account and betterment will not apply unless specifically agreed upon

between the OO and the Undertaker using Appendix F of the CoP as a guide.

1.2.10 Prior to the commencement of any diversionary works not covered by the NRSWA and CoP, a schedule of payments may be agreed with the Undertaker distributing payments at intervals during execution of the diversionary works.

1.2.11 **Standard letter NRSWAC1.1** should be used.

1.3 The Street Works (Sharing Of Costs Of Works) Regulations 1992 And The Street Works (Sharing Of Costs Of Works) (England) Regulations 2000

1.3.1 Section 85 of the NRSWA provides for regulations prescribing the way in which Allowable Costs of diversionary works will be shared between relevant OOs and Undertakers. These are contained in The Street Works (Sharing of Costs of Works) Regulations 1992 and The Street Works (Sharing of Costs of Works) (England) Regulations 2000. There is no change between the 1992 and 2000 Regulations in respect of highway works except that works of tunnelling or boring (see section 86(3)(h) England only) under the highway do not attract any contribution.

1.3.2 Under the provisions of the NRSWA, the OO will share with the Undertaker the Allowable Costs of diverting or protecting Undertaker's apparatus required as a result of diversionary works. This is known as the standard cost sharing principle.

The principle states that the OO and the Undertaker shall share the Allowable Costs of diverting or protecting apparatus as a result of diversionary works as 82% and 18% respectively (the 2000 Regulations do not alter the cost sharing arrangements except for tunnelling or boring works). For the OO to secure an entitlement to the Undertaker's contribution:

- (a) there must be an agreement between the OO and the Undertaker that the costs will be shared; and
- (b) the OO must pay 75% of its 82% share as an advance payment (as a lump sum or instalments - instalments being allowable for works over three (3) months duration).

1.3.3 Where cost sharing applies the Undertaker shall either deduct its contribution from the Allowable Costs payable by the OO or shall pay its contribution to the OO when the works are completed on its behalf by the OO contractor. Undertakers must also make advance payment to the OO where they wish to secure a contribution from the OO.

1.3.4 The PS should seek early agreement with the Undertaker regarding any deferment of renewal, betterment and credit for recovered or scrap materials which may be realised during the diversionary work.

1.3.5 There are certain situations which vary from the standard principle. Such situations include specific cases of changes of carriageway construction, redundant highways and bridges, replacement or modifications of a bridge, special cases of change of depth of cover and works wholly or partly funded by a private developer or other third party.

Variations on the standard principle are defined fully in section 9.3 of the CoP. The PS should be aware that there are variations to the standard principle. The OO Agent shall ensure he operates the provisions of section 9.3 of the CoP.

1.3.6 The PS should also be aware that, contrary to the accepted principle of not paying for work before it is carried out, it is necessary to pay the 75% of the OO's 82% share in advance to secure the contribution from the Undertaker (see 5.2.4 below).

In this situation OO policy is to make the advance payment, since this special case is backed by statute. When the OO makes the advance payment the Undertaker then has a statutory obligation to contribute the Undertaker's 18% share of the Allowable Costs.

contractor's responsibilities and the mechanisms for adjustment of the D&B final account based on actual costs payable to the Undertakers.

The Employer's Requirements, 'Statutory Undertakers' further describes the responsibilities of the D&B contractor to programme and co-ordinate the works, together with the information that will be supplied to them by the OO.

In the case of OO D&B contracts the contract documentation should include the estimated costs of necessary diversionary works as set out in the procedures.

1.4 Procurement

1.4.1 The OO employ several differing forms of procuring works. Each of the differing forms of procuring works may impact upon the standard procedure contained in this note. This section addresses the impact of each form of procurement on the PS's responsibilities for implementing the procedure.

1.4.5 OO Design Build Finance and Operate (DBFO)

1.4.2 Engineering and Construction Contract (ECC)
Use of the ECC follows the standard procedure contained in this note.

DBFO contracts deal with diversionary works differently from the forms referred to in 1.4.2 to 1.4.4 above.

1.4.3 Institution of Civil Engineers Conditions of Contract Fifth Edition (ICE 5th)
Use of the ICE 5th follows the standard procedure contained in this note.

When contracts are tendered, details of all liaison with Undertakers up to that point will be made available to the DBFO Companies. This information is provided for information purposes only.

1.4.4 OO Design and Build (D&B)
D&B contracts deal with diversionary works differently from the forms referred to in 1.4.2 and 1.4.3 above. In general terms the D&B contractor is responsible for the programming and co-ordination of the diversionary works, however payments for diversionary works are generally made by the OO to the Undertakers directly (refer to specific contract details for any variation). The OO Agent shall keep the PS informed of progress on diversionary works.

Once the contracts are awarded the DBFO Company is delegated certain functions under the NRSWA and acts on behalf of the SoS in performing these delegated functions. In relation to diversionary works the DBFO Company will carry out many functions which would normally be performed under other forms of contract by the PS or OO Agent.

Each contract has negotiated differences from the model contract and it is therefore necessary to make reference to the specific contract documents for clarity of the points made and to understand the functions to be carried out by the PS, the OO Agent and the DBFO Company.

The D&B contractor's responsibilities for dealing with Undertakers are detailed in the D&B model contract documents. The Instructions for Tendering include the D&B

1.4.6 Maintenance Contracts

A small proportion of OO highways or roads are under the responsibility of DBFO companies. The majority of OO highways or roads are administered by appointed agents. These organisations may use different forms of contract, including the above, to carry out major schemes of improvement and maintenance. Routine and minor maintenance work is normally carried out by a maintenance contract. In a number of maintenance schemes the effect on Undertakers' apparatus is slight and generally allows little option for alternative work by Undertakers. In that situation the process for preliminary inquiries (C2) and budget estimates (C3) may be omitted and the liaison process may commence at the detailed estimate (C4) stage. In such a situation where no C3 estimate is prepared, the OO **does not** pay for the preparation of the C4 estimate.

- 1.4.7 Timescales for the submission of estimates and information from Undertakers are stated in the CoP. OO Agents should liaise with Undertakers to ensure timely submission. In cases of difficulty the PS should seek specialist advice to resolve any problems.

2. PRELIMINARY INQUIRIES (C2)

2.1 Scheme Identification (Preliminary Inquiries)

2.1.1 During the Scheme Identification Study the PS (or the OO Agent, if appointed) should seek from the Undertakers, details of their apparatus within the specific section of the highway or road which is being considered for improvement without making any commitment to the scheme.

Undertakers should provide such information as they have available from records and draw attention to any likely special problems which could arise from the OO's work.

2.1.2 For small scale works where the effect on any Undertaker's apparatus is minimal, the preliminary inquiry stage could be omitted. In this instance the PS must estimate the Undertaker's costs in the justification for the scheme (see also 4.1.4 below).

2.1.3 Where the PS initiates inquiries directly **standard letter NRSWAC2.1** should be used.

2.1.4 When an OO Agent has been appointed the PS instructs the OO Agent using **standard letter NRSWAC2.2**. The PS instructs the OO Agent to use **standard letter NRSWAC2.3**. It is important that the OO Agent makes clear to the Undertaker that the inquiry is on behalf of the OO in order that the Undertaker does not charge for the information. The OO Agent must report the outcome of the inquiries to the PS in accordance with 2.2.1 below.

2.1.5 Requested information should normally be received from the Undertakers within **10 working days** in accordance with C2 of the CoP. This period may be extended by mutual agreement between the PS and the Undertaker.

2.1.6 Undertakers should not charge and PSs should not pay for Preliminary Inquiry information.

2.1.7 The Undertaker should supply information regarding the general position and nature of apparatus from its records and draw attention to any limitations in the quality of this information. If the Undertaker must take steps to determine this information this would be at the Undertaker's expense. C1.4 of the CoP details the information to be supplied at Preliminary Inquiry stage.

2.2 Feasibility And Route Options

2.2.1 At feasibility and route options stage an OO Agent will have been appointed by the OO. If preliminary inquiries have not been made at the Scheme Identification Stage the PS should instruct the OO Agent to undertake the inquiries (**standard letter NRSWAC2.3**) and report.

The OO Agent shall report back to the PS on the information supplied in response to the preliminary inquiries. In particular the OO Agent shall identify:

- (a) any Undertakers which have not yet provided information; and
- (b) likely special problems identified by the Undertakers.

3. BUDGET ESTIMATES (C3)

3.1 Technical Appraisal Report (TAR)

3.1.1 The TAR summarises the draft scheme preparation and budget estimates. Procedures may vary from OO to OO but the principle for refining the design of the preferred route with a review to minimising Undertakers' costs should be pursued. During preparation of the TAR the OO Agent should follow up the preliminary inquiries and submit details of the proposed scheme to the Undertakers in accordance with C3 of the CoP. The Undertakers should respond with preliminary details of the effects on its apparatus and provide budget estimates for the necessary works and an indication of any special requirements involved such as:

- (a) items of equipment on long delivery and the need for advance ordering;
- (b) interruption of supplies to consumers;
- (c) disconnection of supplies to premises which are to be demolished;
- (d) special wayleave agreements associated with the diversion of its apparatus;
- (e) early access to sites for the construction of special structures such as sub-stations, pressure regulation stations, etc; and
- (f) planning consents and special ministerial consents.

3.1.2 Budget estimates from the Undertakers should include all costs likely to arise from the necessary measures in consequence of the OO's works as far as can be reasonably assessed at preliminary design stage, including administration and supervision charges

and specifying a base date. The estimates should be provided normally within **20 working days** and at no charge to the OO.

3.1.3 Budget estimates should be requested from Undertakers in a standard format using **proforma NRSWAC3** under cover of **standard letter NRSWAC3.1**. A separate budget estimate should be requested for any alternative routes identified.

3.1.4 Upon receipt of the budget estimates (completed proforma NRSWAC3) from the Undertakers the OO Agent should check and report to the PS that:

- (a) the submissions conform with the requirements of the CoP; and
- (b) the submissions are complete and contain supporting information justifying the Undertakers' proposals and costs evaluation.

3.1.5 The PS should assess the OO Agent's report and verify that the requirements of the CoP are being met before submitting the TAR.

3.1.6 Where the PS or the OO Agent considers that clarification of the C3 budget estimate is necessary, the PS or OO Agent should liaise with the Undertaker to secure clarification.

3.1.7 The budget estimates received at this stage should include all costs likely to arise from the necessary measures in consequence of the OO's works as far as can reasonably be assessed at the draft design stage by the Undertaker, including administration and supervision charges and specifying a base date. From the information provided the PS and OO Agent should be able to identify and evaluate any potential saving which may become apparent at later stages.

- 3.1.8 The PS is responsible for initiating and maintaining for the duration of the scheme an audit trail, documenting key decision stages between the initial budget estimates provided by the Undertakers and final payment. The audit trail must demonstrate that the PS (or OO Agent) has considered any possible alternatives and that the calculation of Allowable Costs and cost sharing in accordance with the CoP, are correct and justified.

3.2 Preferred Route Announcement (PRA)

- 3.2.1 Following the PRA the OO Agent should consult the Undertakers to consider modifications to the scheme which may assist in facilitating the programming of the works and/or reducing the cost of the diversionary works. This consultation and refinement of the design is restricted to the preferred route.
- 3.2.2 The OO Agent shall refine the preferred route design following consultation with the Undertakers. The OO Agent also reviews and updates, if necessary, the budget estimates and reports to the PS certifying that budget estimates for the preferred route are in accordance with the CoP.
- 3.2.3 The PS should assess the OO Agent's report before authorising the Order Publication Report.
- The PS should document his decision, accepting the C3 budget estimates, to fulfil his obligations to provide an audit trail.

4. DETAILED ESTIMATES (C4)

4.1 Detailed Estimates

4.1.1 At the detailed stage the PS, OO Agent (or DBFO Company) should submit to each Undertaker details of the final design with working drawings and an outline programme.

When not delegated to despatch the C4 request the OO Agent shall still prepare **proforma NRSWAC4** and **standard letter NRSWAC4.1** for the PS to request the detailed estimates from the Undertakers.

The Undertakers should respond, normally within **25 working days**.

(For large schemes this may be an onerous requirement and the period may be extended by mutual agreement).

4.1.2 The PS and OO Agent should note that when undertaking diversionary works under the terms of the NRSWA, the Act imposes a statutory relationship between the parties defined in the NRSWA. Any terms and conditions of contract or engagement submitted by any Undertaker for signature will have no legal force and are nullified by the provisions of the NRSWA and CoP (see 6.1.1 below).

4.1.3 C4 estimates from Undertakers should include:

- (a) a description of the necessary measures, clearly stating the reasons for the diversion or protection and giving details of the existing apparatus affected, such as lengths and sizes of pipes/cables/ducts, depths of cover and ages;
- (b) a detailed specification of the works required;
- (c) a detailed estimate with itemised costs;

(d) provisional programmes and timescale for works; and

(e) all necessary information for the civil engineering work required if the Undertaker's works are to be carried out by the OO's contractor.

Detailed guidance on what should be in the Undertaker's submission is given in C4 of the CoP.

4.1.4 The OO will accept the cost of the preparation of initial C4 estimates. The exception to this rule is smaller-scale works when the preliminary or draft scheme stages could be omitted and the process could commence with the submission of a detailed scheme to the Undertakers. In cases when no C3 budget estimate has been prepared the Undertaker should prepare the C4 estimate **free of charge**. Payment for C4 estimates should only be made when the estimate has been received in full and all clarifications have been resolved with the Undertaker.

4.1.5 The CoP states that Undertakers are entitled to charge for additional C4 estimates requested after the initial C4 estimate. When amendments to a C4 detailed estimate are required, the OO will only pay for the costs of the necessary revisions to the initial estimate. The OO Agent shall verify when amendments are made, that costs are for 'revisions' only.

The OO Agent shall check the C4 estimates and compare them to the C3 budget estimates (if obtained). Where the estimates vary significantly the Undertakers should be asked to clarify the changes. The OO Agent shall state clearly in all correspondence with an Undertaker regarding clarification of the initial C4 estimate, that it is not a request for an additional estimate and the OO is not liable for charges.

- 4.1.6 In the case of OO D&B contracts the PS should request the submission of C4 estimates from Undertakers based on the Indicative Design. This information should then be included in the OO D&B contract documentation prior to tendering.
- 4.1.7 The OO Agent shall certify to the PS that the C4 estimates accord with the requirements of the CoP. The PS should sanction payment of the Undertaker's C4 estimate preparation costs.
- 4.1.8 The PS should document his decision, sanctioning the C4 estimates, to fulfil his obligations to provide an audit trail.

SUPERSEDED

5. NOTICES AND ADVANCE ORDERS (C5)

5.1 Formal Notice

5.1.1 Under section 85 of the NRSWA (and NRSWA Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters 1992 and subsequent amendments) the OO must issue formal notice of works before they can proceed. The PS and OO Agent should refer to clause 4.4 Formal Notice of the CoP for detailed guidance.

5.1.2 It is the intention of the CoP that the OO and Undertakers should plan their work jointly so as to avoid conflict and unnecessary diversionary works. The PS is obliged to ensure close liaison and dialogue with Undertakers during the execution of these procedures. However, it remains necessary to retain a system of formal notification prior to entering the information (scheme) in the Street Works Register.

5.1.3 The Street Works Register is kept by the highway authority. The PS should inform the register holder of the scheme. In accordance with C5 of the CoP the OO should serve formal notice on the Undertakers of its intention to proceed with the scheme.

The formal notice should be issued by the PS using **standard letter NRSWAC5.1**. The Undertakers should acknowledge receipt of the formal notice.

(The PS should note that Line Orders/Side Road Orders do not constitute a Formal Notice).

5.1.4 Where an Undertaker is planning to carry out works in the highway or road, the Undertakers are permitted to object by serving counter notices within one month of receipt of the notice. It is the intention of the CoP that disputes regarding notice and counter notices are settled by negotiation.

5.1.5 Issue of the formal notice by the OO effectively means that, provided the roadworks commence within 5 years, any equipment installed by an Undertaker after receipt of the notice shall be diverted or otherwise protected at the Undertaker's expense.

5.2 Advance Works

5.2.1 In many circumstances there may be materials required which have long delivery periods or works which require more extensive preparation. The PS should consider issuing formal notice for advance materials and works as early as possible following consultation and receipt of proposals from Undertakers.

5.2.2 It may also be convenient, within budget constraints, to carry out some or all Undertakers' works which can be completed in advance of the main works. These works should be identified as soon as possible and the Undertakers consulted.

The timing of these works should, if possible, be included in the programmes sent to the Undertakers with the request for a C4 estimate. If this is not possible the programme should be issued as soon as practicable.

Under D&B contracts advance work should only be carried out where the need for diversion is necessary regardless of D&B contractors' alternative designs.

5.2.3 Orders for advance works and materials should be issued by the PS. These works and materials should have been agreed during consultations and identified in the C4 estimates.

The PS should use **standard letter NRSWAC5.2** to place orders for advance works.

5.2.4 The PS should ensure that advance payments are agreed with the Undertaker and accord with the principles of C9.3 of the CoP as follows:

(a) Case 1- Single Payment

This case will typically apply to works of short duration where the benefits of payments by instalments are outweighed by administration costs. It is recommended that works of less than 3 months duration should be prepaid, subject to final invoicing;

(b) Case 2 - Payments in Instalments

Where works extend over a long period, payment may, by mutual agreement between the OO and Undertaker, be by instalments. There are two possibilities:

- (i) the total costs are divided by the estimated duration of the works in months and invoices submitted for equal monthly payments in advance and also settled on a monthly basis; and
- (ii) where the works are of a long duration but where the costs are likely to fluctuate greatly over the period, then agreement should be reached as to the timing of invoices and the amounts to be invoiced over the period.

Invoices may be monthly or at some other agreed interval at the choice of the OO. The Undertaker can either invoice the OO at each interval for the agreed amount, or raise one invoice for the total amount showing the instalments agreed and the dates when due.

All invoices will attract Value Added Tax (VAT).

When the Undertaker submits an invoice at each interval for the agreed amount the VAT is payable on the agreed amount only.

When a single invoice for the total amount is submitted showing the instalments, VAT will become due when the invoice is rendered and the first payment must be increased by the total amount of VAT due. The VAT element is not spread over the instalments.

6. ISSUE OF MAIN ORDERS (C6)

6.1 Issue Of Main Orders To Undertakers (C6)

6.1.1 Orders are issued by the PS (or OO Agent) to the Undertakers and the resultant statutory relationships are between the OO and the Undertaker. Where the DBFO Company acts on behalf of the SoS the resultant statutory relationship is between the DBFO Company and the Undertaker (any other terms and conditions of contract or engagement are nullified by the provisions of the NRSWA and CoP (see 4.1.2 above).

The PS should advise the Undertakers of the name of the roadworks contractor and the roadworks contractor's site staff, the name of the OO Agent and the commencing date of the contract (using **standard letter NRSWAC6.1**).

- 6.1.2 During the roadworks contract, the Undertaker's works are generally carried out in one of three ways:
- (a) by the Undertaker, either directly or using subcontractors;
 - (b) by the roadworks contractor; and
 - (c) by a combination of the above.

The OO Agent shall ensure that activities in (b) and (c) above are included in the contract documents of the roadworks contract and that the payment items are reconciled with the C4 estimates received in response to **standard letter NRSWAC4.1**.

6.1.3 Regardless of the way in which the Undertakers' works are carried out, there is the obvious need for close co-operation and co-ordination between roadworks contractors and the Undertakers. The PS should ensure that roadworks contracts include details of all Undertakers' works agreed at the time of the contract including notice

periods for commencement, duration and other programming requirements.

6.1.4 The PS should despatch Official Works Orders under cover of **standard letter NRSWAC6.2** using **proforma NRSWAC6.3**. The PS should issue separate Official Works Orders for each Undertaker. Each Official Works Order should be completed in full and reference should be made to all diversions included.

7. CONSTRUCTION (C7)

7.1 Site Works

7.1.1 The OO Agent shall keep contemporary records of matters relating to the Undertakers during the course of the construction contract. These records shall include, for each Undertaker and each diversion:

- (a) Start and completion dates;
- (b) Progress reports;
- (c) Programme delays;
- (d) Standing time (of the roadworks contractor and/or the Undertaker);
- (e) Resources;
- (f) Notes of relevant meetings; and
- (g) Relevant correspondence.

The OO Agent shall keep all parties to the roadworks contract informed in writing of the above matters relating to diversionary works.

7.1.2 The OO Agent shall also maintain for each Undertaker a copy of:

- (a) any correspondence (including authorisation for any advance payments);
- (b) formal notices (NRSWAC5.1);
- (c) C3 estimates (NRSWAC3);
- (d) C4 estimates (NRSWAC4);
- (e) Official Works Orders (NRSWAC6.3);
- (f) the payment terms agreed;
- (g) any Works Order - Agreed Variations/Record of Change (NRSWAC7.1);

(h) meeting notes; and

(i) all invoices.

7.1.3 The PS should ensure that records accumulated prior to the commencement of construction are forwarded to the OO Agent so that a complete set of information relating to each Undertaker is available for audit purposes. The PS should ensure that these records are maintained by the OO Agent.

7.1.4 The OO Agent shall document fully all variations or changes relating to the Undertakers works. This information may be required to determine the outcome of future claims by the OO or Undertaker.

7.1.5 Under C9.10 of the CoP, the Undertakers are required to provide the OO with monthly reports on costs incurred and the projected outturn. Where the actual costs vary significantly from the estimated (either in programme or cost), revised monthly payments may be agreed (see Chapter 9 below).

7.2 Monitoring Progress

7.2.1 To allow the effective monitoring of diversionary works on site it is important that the OO Agent has a complete set of records regarding each Undertaker's works. Only from this background will the OO Agent be able to successfully monitor the diversionary works.

7.2.2 When the roadworks contractor has been appointed and before commencement of works, a formal meeting should take place between the OO Agent, the roadworks contractor and the Undertakers to establish detailed programming, methods of working and general co-ordination of the works.

- C7 of the CoP details the obligations of the OO Agent and the Undertakers and may be used by the OO Agent to form an agenda for the formal meeting.
- 7.2.3 The PS should also ensure that regular meetings between these parties take place during the contract to review progress, identify any potential delays, disruptions, variations or changes. Early identification of any such matters should allow solutions to be identified quickly and consequently reduce or avoid any claims or delays.
- 7.2.4 The OO Agent shall minute the meetings and circulate to all attending parties. The minutes shall be copied to the PS. (Note, under D&B contracts minutes may be taken by the D&B contractor.)
- 7.2.5 The OO Agent shall obtain a copy of any programme updates agreed between the Undertaker and the roadworks contractor. The OO Agent shall inform the PS of any programme modifications relating to the Undertaker's works.
- 7.2.6 As the scheme proceeds, the need for variations or changes to the Undertaker's works may arise. The details and costs of any required variations or changes may be agreed between the OO Agent, roadworks contractor and the Undertaker. The OO Agent is responsible for completion of **proforma NRSWAC7.1 Works Order – Agreed Variation/Record of Change**. The agreed variation or change Works Order for the Undertaker must be placed by the PS.
- 7.2.7 The OO Agent shall ensure that this form is completed fully and that the following information is included:
- (a) reference to Official Works Order;
 - (b) description of the variation or change;
 - (c) estimated value;
 - (d) liability for payment; and
 - (e) contra charges.
- Under OO D&B contracts the D&B contractor, being responsible for the design, may instigate variations or changes to the Undertaker's work. The OO Agent shall remain responsible for completion of proforma NRSWAC7.1.
- Under DBFO contracts the DBFO Company will be responsible for agreeing, documenting variations or changes and issuing proforma NRSWAC7.1.
- 7.2.8 The OO is liable to reimburse Undertakers for any special materials should the works requiring the special materials be cancelled. The OO is liable for the full cost of the materials if delivered, or a cancellation charge if not.
- 7.2.9 During the monitoring of construction the OO Agent shall maintain records, as described in 7.1.1 above. The OO Agent shall ensure that specific contemporary records are maintained for any potential claim situation and where possible agreed with the Undertaker and roadworks contractor as appropriate. The OO Agent is responsible for taking immediate action to mitigate any potential delays in consultation with the Undertaker and roadworks contractor.

8. CLAIMS (C8)

8.1 Claims

8.1.1 The CoP states that if the OO or the Undertaker does not comply with an agreement between them as to the necessary measures, the OO or the Undertaker is liable to compensate the other in respect of any loss or damage resulting from the non-compliance.

8.1.2 Claims may arise between the OO and the Undertaker from several sources, for example:

- (a) when the roadworks contractor is delayed by the Undertaker; and
- (b) when the Undertaker is delayed by the roadworks contractor.

8.1.3 Claims from the Undertaker for the cost of repair of damage caused by the roadworks contractor to the Undertaker's apparatus should be dealt with under the roadworks contractor's third party insurance which the roadworks contractor is required to have under the construction contract.

8.1.4 Claims may arise from delays suffered by one Undertaker as the result of default by another. Undertakers should endeavour to resolve these claims in the first place without reference to the OO or the roadworks contractor.

8.1.5 The PS through the OO Agent should make every effort to avoid or mitigate claims by monitoring closely the progress of the scheme. The PS should note that any claim sums, properly due, may incur interest charges if not paid promptly.

Under OO D&B contracts the D&B contractor is responsible for notifying the PS of any claims arising from Undertakers' works and for initiating the early resolution of any potential claim situation.

8.1.6 The OO Agent shall advise the PS immediately on receipt of any claim, from the roadworks contractor, that is attributed to an Undertaker. The OO Agent shall then notify the Undertaker that the OO may make a claim, in accordance with the CoP, for consequential losses from the Undertaker.

8.1.7 Under OO DBFO contracts the DBFO Company retains responsibility for the resolution of any claims relating to diversionary works, with the exception of advance works paid by the OO.

8.2 Dispute Resolution

8.2.1 The CoP envisages that all disputes should be resolved at a local level.

8.2.2 If however, agreement cannot be reached on any matter arising the dispute should be referred to conciliation. Arbitration is also contemplated under section 84(3) (England and Wales) or section 143(3) (Scotland) of the NRSWA.

8.2.3 It should be noted that under section 108 of the Housing Grants, Construction and Regeneration Act 1996, both parties hold the right to refer a dispute arising for adjudication under a procedure complying with section 108.

9. INVOICING AND PAYMENT (C9)

9.1 Invoicing And Payment

9.1.1 In accordance with C9 of the CoP the Undertaker is paid for the actual work completed. The final payment made by the OO should be on the basis of an itemised invoice detailing the works which are chargeable.

9.1.2 Invoices should be presented by the Undertakers in a similar format to the C4 estimates. The OO Agent shall request the Undertakers to submit final invoices in accordance with **proforma NRSWAC9.1 Final Account**.

9.1.3 Where the Undertaker's own invoice is formatted differently the OO Agent shall ensure that the same details, as shown on proforma NRSWAC9.1, are included and identified.

9.1.4 The final account should be generally consistent with the value of the C4 estimate and any agreed variations or changes. If the final account varies and is higher than the C4 estimate, justification must be documented by the OO Agent. The OO Agent shall ensure that the final account is supportable at audit.

9.1.5 Under C9.6 of the CoP final payment calculations must include allowances for deferment of renewal as defined in Appendix E of the CoP, betterment as defined in Appendix F of the CoP and credit for recovered or scrap materials. The OO Agent should check that these allowances have been included by the Undertaker in the final invoice. The OO Agent shall check the final account and ensure that:

- (a) the invoice is correct arithmetically;
- (b) the invoice is in accordance with proforma NRSWAC9.1 and includes the required back up information;

- (c) the invoice is correct in the application of VAT;
- (d) the final account has the appropriate deductions for betterment, deferment of renewal, recovery of material and cost sharing; and
- (e) the final account is consistent with the C4 estimate with due allowance for agreed variations or changes.

9.1.6 Where any information is incorrect or missing, the OO Agent must advise the Undertaker promptly, to avoid any claim from the Undertaker for late payment by the OO. Late payment of invoices by the OO may give rise to claims for interest charges.

9.1.7 The final account invoice proforma NRSWAC9.1 includes the following breakdown of information relating to the actual works completed by the Undertaker:

- (a) = total estimated cost of works (or stage of works), itemised to reflect the detailed estimate provided under section C4(iii);
- (b) = 82% of (a), being the proportion chargeable to the authority where advance payment is agreed beforehand, or 100% where not agreed;
- (c) = 75% of (b), being the proportion of (b) which is required to be paid in advance of the work commencing;
- (d) = 25% of (b), or the outstanding amount on finalisation of actual accounts for the works (or stage of the works) to be paid within 30 days of the presentation of and agreement to the final account.

- 9.1.8 The OO Agent shall note that the calculation of allowance for deferment of renewal should be completed by the Undertaker in accordance with the Bacon and Woodrow formula presented in Appendix E of the CoP. Deferment of renewal allowances only apply if certain conditions are satisfied (paragraphs E1.1(a)-(f) of Appendix E) and the OO Agent shall test the applicability of any deferment allowance. The OO Agent shall note that Appendix E of the CoP presents the accepted normal lives of apparatus with nil residual value. The normal lives presented in the CoP shall be used for the calculation of any deferment allowances.
- 9.1.9 The OO Agent shall check, approve and certify invoices and forward them to the PS. The PS countersigns invoices for payment.

9.2 Audit Requirements

- 9.2.1 The OO Agent should undertake a detailed examination of the Undertaker's charges to establish that they are allowable and reasonable before certifying to the PS.
- 9.2.2 The CoP states that reasonable facilities should be made available to permit either party to verify that the charges being made by the other party are allowable and reasonable.
- 9.2.3 The PS must ensure that the audit trail is complete through all stages of the scheme up to and including the final account.

10. REFERENCES

Highways Act 1980.

New Roads and Street Works Act 1991.

Housing Grants, Construction and Regeneration Act
1996.

Measures Necessary Where Apparatus is Affected by
Major Works (Diversionary Works): A Code of Practice
1992.

Code of Practice for the Co-Ordination of Street Works
and Works for Road Purposes and Related Matters
1992.

The Street Works (Sharing of Costs of Works)
Regulations 1992.

The Street Works (Sharing of Costs of Works)
(England) Regulations 2000.

HM Treasury Procurement Guidance No 1: Essential
Requirements for Construction Procurement.

SUPERSEDED

11. ENQUIRIES

Approval of this document for publication is given by the undersigned:

Chief Highway Engineer
The Highways Agency
St Christopher House
Southwark Street
London SE1 0TE

G CLARKE
Chief Highway Engineer

Chief Road Engineer
Scottish Executive Development Department
Victoria Quay
Edinburgh
EH6 6QQ

J HOWISON
Chief Road Engineer

Chief Highway Engineer
The National Assembly for Wales
Cynulliad Cenedlaethol Cymru
Crown Buildings
Cathays Park
Cardiff CF10 3NQ

J R REES
Chief Highway Engineer

All technical enquiries or comments on this document should be sent in writing as appropriate to the above.

ANNEX 1 – EXAMPLES

EXAMPLE A - New Road Merges With Existing Road
– Diagram A

EXAMPLE B – New Road In Cutting Crosses Existing
Side Road Which Is Re-Aligned On An Overbridge –
Diagram B

EXAMPLE C – New Road Crosses Existing Road At A
New Roundabout – Existing Road Is Widened And
Reconstructed As Part Of The Works – Diagram C

EXAMPLE D – New Road Across Open Countryside –
Diagram D

SUPERSEDED

EXAMPLE A - New Road Merges with Existing Road – Diagram A

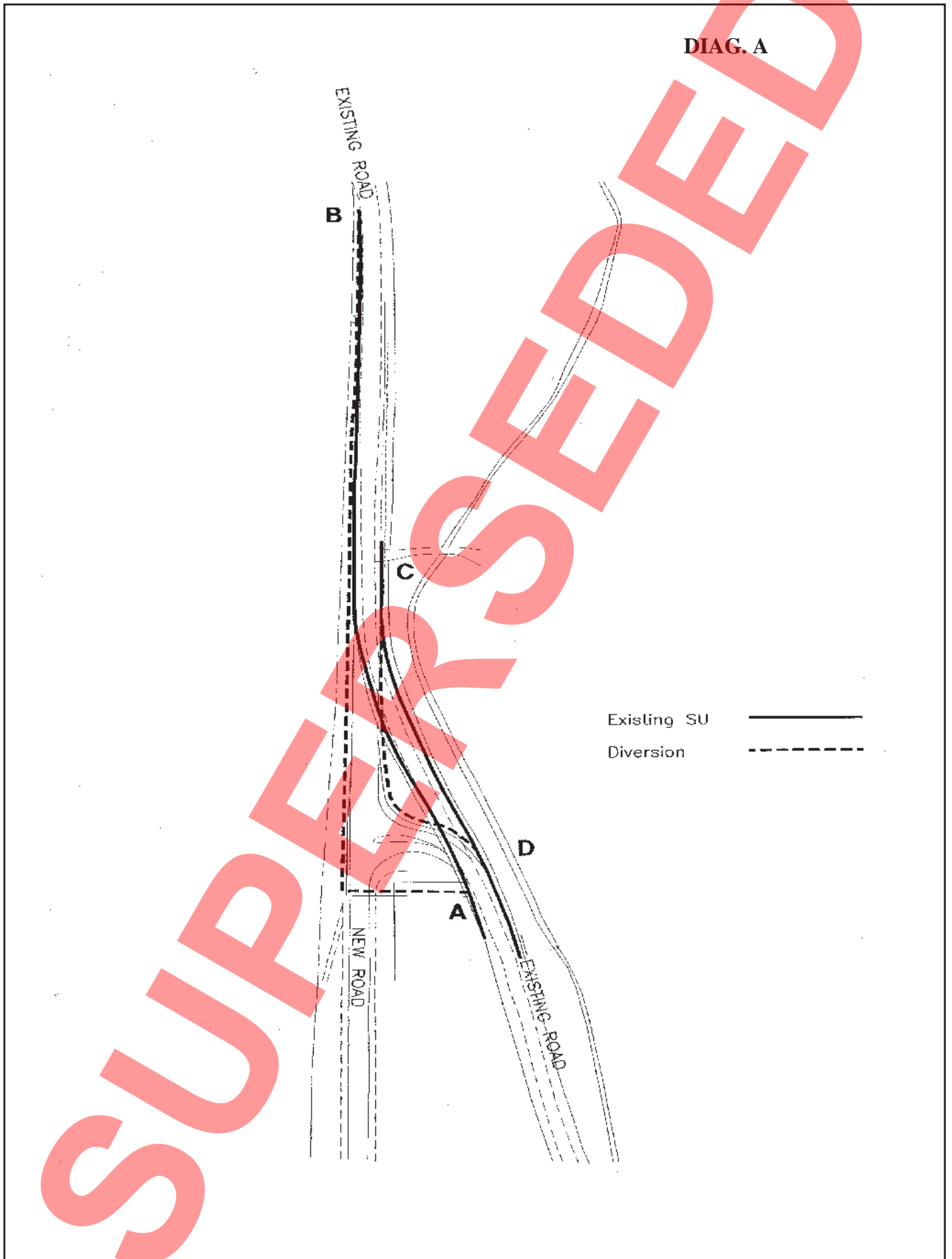
A1 This example shows the construction of a new road which, at its end, merges into an existing highway which contains Undertaker's apparatus. The Undertaker's existing apparatus follows the line of the existing road. The layout shown in the diagram indicates the new route of the apparatus diverting along the new road and connecting back to the original alignment where it suits the road alignment.

For the purposes of this example, it is assumed that the transition length into the new road places the apparatus in a position which is unacceptable from the point of view of position beneath the new alignment.

A2 Where the new road merges with the existing road the reconstruction of the existing road is major highway works or major works for road purposes.

A3 The provisions of the NRSWA and the CoP apply to the diversion of apparatus and sharing the Allowable Costs applies.

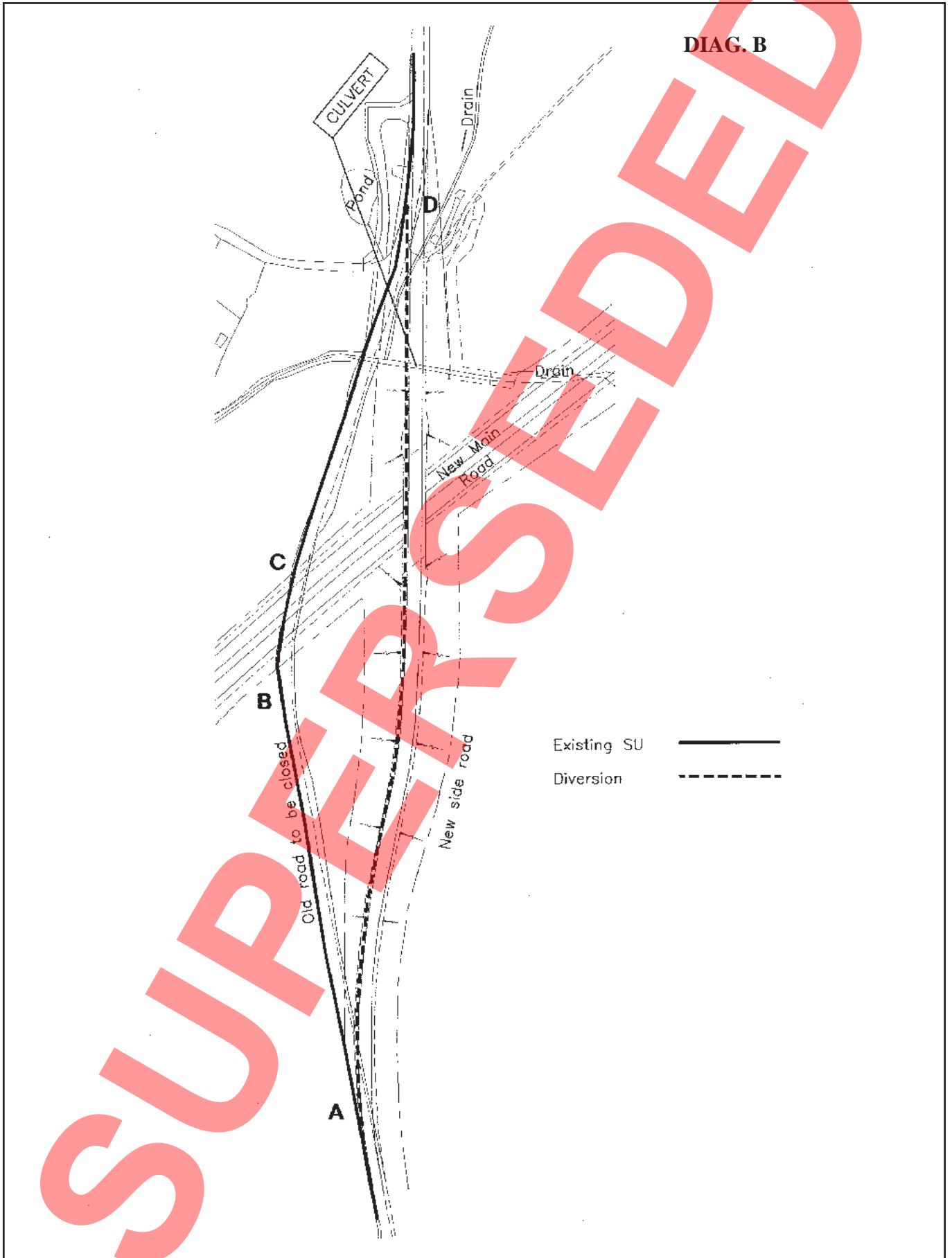
SUPERSEDED



EXAMPLE B – New Road in Cutting Crosses Existing Side Road which is Re-aligned on an Overbridge – Diagram B

- B1 This example shows a new road to be built in cutting across an existing road. In order to facilitate the new construction the existing side road is to be reconstructed on a new alignment to pass over the new main road and rejoin the existing side road. The existing side road contains Undertaker's apparatus. It is proposed that the existing side road will be closed and the land restored to some other use. The layout shown in the diagram indicates the new route of the apparatus diverting along the new road and connecting back to the original alignment where the new alignment rejoins the existing route.
- B2 The reconstruction of the existing side road is major highway works or major works for road purposes.
- B3 The provisions of the NRSWA and the CoP apply to the diversion of apparatus and sharing the Allowable Costs applies.

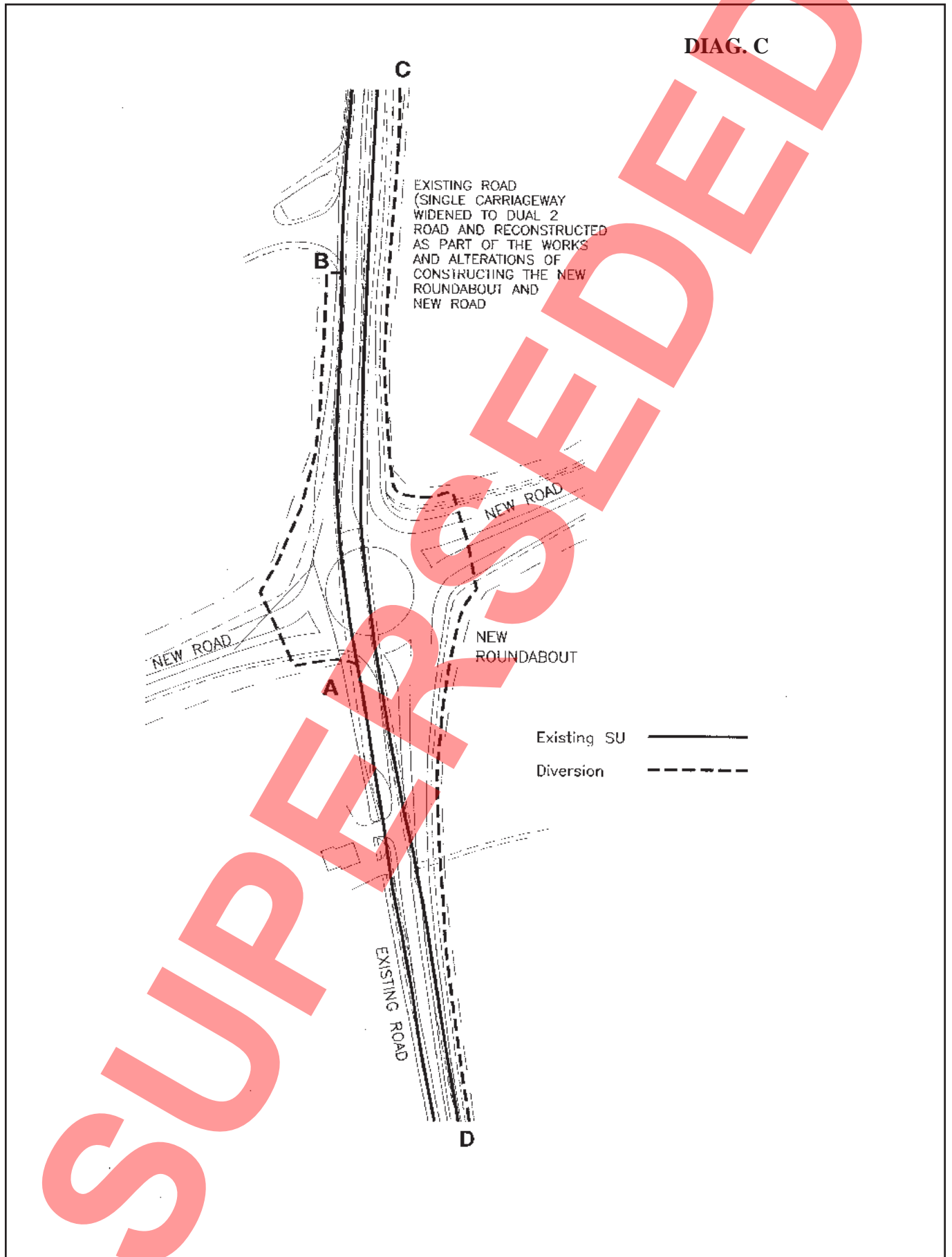
SUPERSEDED



EXAMPLE C – New Road Crosses Existing Road at a New Roundabout – Existing Road is Widened and Reconstructed as Part of the Works – Diagram C

- C1 This example shows a new road crossing an existing road at a new roundabout. The existing road is widened and reconstructed to link to the roundabout. The Undertaker's apparatus is in the verge both sides of the existing road. The layout shown in the diagram indicates the new route of the apparatus in the widened verge of the existing road and crossing the junction below the new road.
- C2 The reconstruction of the highway with a new roundabout is major highway works or major works for road purposes. The existing apparatus is within the boundary of the highway.
- C3 The provisions of the NRSWA and the CoP apply to the diversion of apparatus and sharing the Allowable Costs applies.

SUPERSEDED



**EXAMPLE D – New Road Across Open
Countryside – Diagram D**

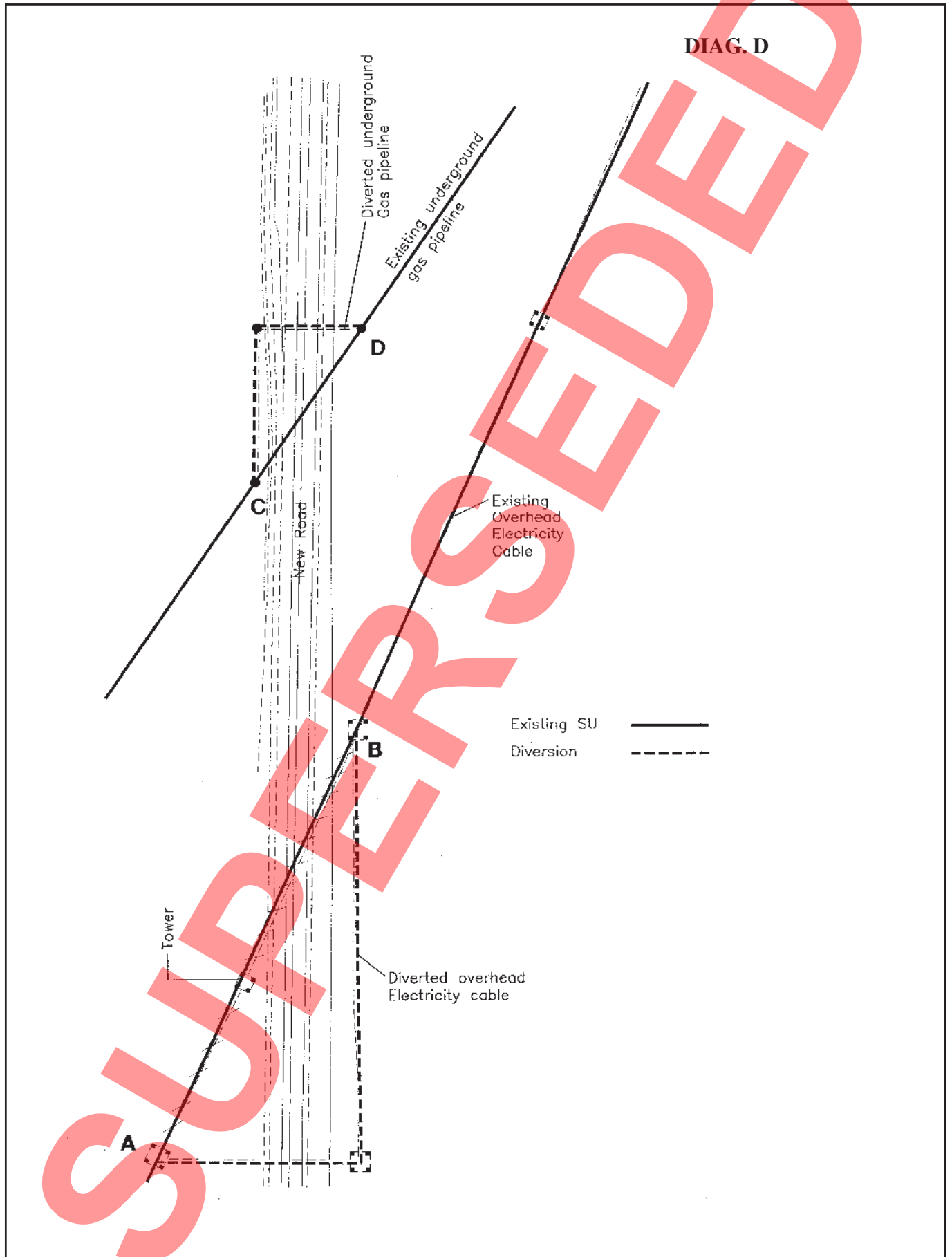
D1 This example shows a new road, through open country, crossing a gas pipeline and overhead electricity cable. Ideally neither of these apparatus would be diverted, the overhead cables having sufficient height and the gas line sufficient depth to be protected.

The layout in the diagram shows possible diversion routes crossing the new road at right angles with links parallel to the road if it was necessary to make diversions.

D2 The construction of the new road **is not** major highway works or major works for road purposes. Therefore the works do not fall under the provision of the NRSWA and sharing the Allowable Costs **does not** apply.

D3 The PS should apply the procedures of the CoP when agreeing and arranging the necessary diversions (see standard letter NRSWAC1.1), the OO accepting the costs for the diversionary works.

SUPERSEDED



ANNEX 2 – STANDARD LETTERS AND PROFORMAS

NRSWAC1.1 Agreement letter from PS to Undertaker

Note on Delegation

NRSWAC2.1 Preliminary inquiry letter from PS to Undertaker

It is noted that the level of delegation to those agent authorities, consultants or others acting on behalf of the OO varies. In certain cases the PS delegates all functions to the OO Agent. If this level of delegation is adopted the PS should inform the Undertakers who will be acting for the OO and all letters may be sent by the OO Agent. The PS may authorise the OO Agent to amend the standard letters accordingly.

NRSWAC2.2 Preliminary inquiry letter from PS to OO Agent instructing preliminary inquiry

NRSWAC2.3 Preliminary inquiry letter from OO Agent to Undertaker

NRSWAC3.1 Budget Estimate (C3) inquiry letter from PS to Undertaker

The PS should note that C5 Advance Orders and C6 Main Orders should be signed by the relevant contractual delegation holder.

NRSWAC3 Estimate proforma for Budget Estimate

NRSWAC4.1 Detailed Estimate (C4) inquiry letter from PS to Undertaker

NRSWAC4 Estimate proforma for Detailed Estimate

NRSWAC5.1 Letter for Formal Notice from PS to Undertaker

NRSWAC5.2 Letter informing Undertaker of Order for Advance Works & expected date of Main Works

NRSWAC6.1 Letter for Contract Information from PS to Undertaker

NRSWAC6.2 Covering Letter for Official Works Order from PS to Undertaker

NRSWAC6.3 Official Works Order

NRSWAC7.1 Official Works Order –Agreed Variation/ Record of Change

NRSWAC9.1 Final Account

NRSWAC1.1 Agreement letter from PS to Undertaker.

IN CONFIDENCE

To *[Undertaker]*

Dear Sirs,

[SCHEME TITLE]

**NEW ROADS AND STREET WORKS ACT 1991 (NRSWA): A CODE OF PRACTICE
“MEASURES NECESSARY WHERE APPARATUS IS AFFECTED BY MAJOR WORKS
(DIVERSIONARY WORKS)” (CoP): APPENDIX C**

AGREEMENT FOR THE APPLICATION OF THE CoP

The *[Insert name of OO]* is looking into the possibility of improving the *[Insert road number]* within the area shown on the enclosed plan(s).

Our initial appraisal suggests you may have apparatus partly within the highway and partly within a greenfield area. For greenfield areas the provisions of the NRSWA and the CoP do not apply. Nevertheless, the *[Insert name of OO]* has agreed with the National Joint Utilities Group (NJUG) that the procedures for dealing with diversions of apparatus laid in highways and roads shall be applied usefully to greenfield areas subject to the *[Insert name of OO]* meeting the total costs. Such costs include all elements of costs and expenses as referred to in sections 96 and 155 of the NRSWA and will be paid upon completion of the works **[unless a payment schedule is agreed]*.

We are proceeding on this basis but if there is anything you wish to discuss please do not hesitate to contact us.

Yours faithfully,

Project Sponsor

**Delete as appropriate*

NRSWAC2.1 Preliminary inquiry letter from PS to Undertaker.

IN CONFIDENCE

To *[Undertaker]*

Dear Sirs,

[SCHEME TITLE]

**NEW ROADS AND STREET WORKS ACT 1991 (NRSWA): A CODE OF PRACTICE
“MEASURES NECESSARY WHERE APPARATUS IS AFFECTED BY MAJOR WORKS
(DIVERSIONARY WORKS)” (CoP): APPENDIX C**

PRELIMINARY INQUIRY (Appendix C2 of the CoP)

The *[Insert name of OO]* is looking into the possibility of improving the *[Insert road number]* within the area shown on the enclosed plan(s).

Various alternatives may be considered and we would be grateful if you would provide details of your apparatus in the area and draw our attention to any likely special problems that could arise from the works. Any proposals for new or replacement plant should be included.

You should be aware that there is no firm commitment to proceed with this scheme at this early stage and continuation will be dependant on progress through the statutory procedures and the availability of funds.

Under the CoP this information should be supplied free of charge and within 10 working days of receipt of this letter. Please contact us at your earliest convenience if you are not able to provide the information within this time.

Yours faithfully,

Project Sponsor

NRSWAC2.2 Preliminary inquiry letter from PS to OO Agent instructing preliminary inquiry.

IN CONFIDENCE

To [OO Agent]

Dear Sirs,

[SCHEME TITLE]

**NEW ROADS AND STREET WORKS ACT 1991 (NRSWA): A CODE OF PRACTICE
“MEASURES NECESSARY WHERE APPARATUS IS AFFECTED BY MAJOR WORKS
(DIVERSIONARY WORKS)” (CoP): APPENDIX C**

PRELIMINARY INQUIRY (Appendix C2 of the CoP)

*We enclose information supplied by the Undertakers at scheme identification stage for the above scheme. Please consult with the Undertakers to confirm that the information is still current.

**Please undertake preliminary inquiries, with the Undertakers using standard letter NRSWAC2.3, for the above scheme and report back on their response. Any proposals for new or replacement plant should be included.

If you wish to discuss this please do not hesitate to contact us.

Yours faithfully,

Project Sponsor

**Delete as appropriate*

***Delete as appropriate*

NRSWAC2.3 Preliminary inquiry letter from OO Agent to Undertaker.

IN CONFIDENCE

To *[Undertaker]*

Dear Sirs,

[SCHEME TITLE]

**NEW ROADS AND STREET WORKS ACT 1991 (NRSWA): A CODE OF PRACTICE
“MEASURES NECESSARY WHERE APPARATUS IS AFFECTED BY MAJOR WORKS
(DIVERSIONARY WORKS)” (CoP): APPENDIX C**

PRELIMINARY INQUIRY (Appendix C2 of the CoP)

The *[Insert name of OO]* is looking into the possibility of improving the *[Insert road number]* within the area shown on the enclosed plan(s).

Various alternatives may be considered and we would be grateful if you would provide details of your apparatus in the area and draw our attention to any likely special problems that could arise from the works. Any proposals for new or replacement plant should be included.

You should be aware that there is no firm commitment to proceed with this scheme at this early stage and continuation will be dependant on progress through the statutory procedures and the availability of funds.

Under the CoP this information should be supplied free of charge and within 10 working days of receipt of this letter. Please contact us at your earliest convenience if you are not able to provide the information within this time.

Yours faithfully,

[OO Agent]

NRSWAC3.1 Budget Estimate (C3) inquiry letter from PS to Undertaker.

IN CONFIDENCE

To *[Undertaker]*

Dear Sirs,

[SCHEME TITLE]

**NEW ROADS AND STREET WORKS ACT 1991 (NRSWA): A CODE OF PRACTICE
“MEASURES NECESSARY WHERE APPARATUS IS AFFECTED BY MAJOR WORKS
(DIVERSIONARY WORKS)” (CoP): APPENDIX C**

BUDGET ESTIMATE (Appendix C3 of the CoP)

Further to our Preliminary Inquiry *[Insert reference]* we attach *[Insert number]* alternative routes for the above scheme.

Please provide C3 Budget Estimates in accordance with the CoP.

We enclose *[Insert number]* proforma NRSWAC3 (2 pages). Under the CoP this information should be supplied free of charge and I would be grateful if you would supply the information within 20 working days of receipt of this letter. We have appointed an agent to act on our behalf and scheme information should be sent to the address shown below.

If you wish to discuss this please do not hesitate to contact our agent.

Yours faithfully,

Project Sponsor

[OO Agent]

Name: _____

Address: _____

Tel No: _____

Fax No: _____

Email: _____

NRSWAC3 Estimate proforma for Budget Estimate.

[Insert OO logo]

NRSWAC3
Page 1 of 2

**NRSWA 1991: A CODE OF PRACTICE
“MEASURES NECESSARY WHERE APPARATUS
IS AFFECTED BY MAJOR WORKS
(DIVERSIONARY WORKS)”
C3 Budget Estimate**

Project No _____
(to be quoted on all correspondence)

Undertaker Ref. _____

Date of Estimate _____

Undertaker _____

Scheme _____

Diversion Ref/Description *[Identify particular alternative route]* _____

Anticipated Duration _____

Base Date _____

Validity Period _____

Method of Dealing with Inflation _____

Cost Estimate Summary:

All Other Costs £ _____

Overhead Charges £ _____

Supervision Charges £ _____

Estimated Project Costs £ _____

Possibility of: Yes/No

Deferment of renewal _____

Betterment _____

Materials Recovered _____

NRSWAC3 Estimate proforma for Budget Estimates. (Cont'd)

[Insert OO logo]

NRSWAC3
Page 2 of 2

Total Estimated Cost of Works (a) £ _____
(exclusive of OO Civil Works Costs where applicable)

In the case of works covered by the cost sharing principle

Deduct 18% Total Estimated Cost of Works (b) £ _____

Deduct 18% of £ OO Civil Works Costs (c) £ _____

Allowable Cost Share (d) = (b) + (c) £ _____

Add 18% of contribution from third party
(Subsidised Works, Grant, etc) (e) £ _____

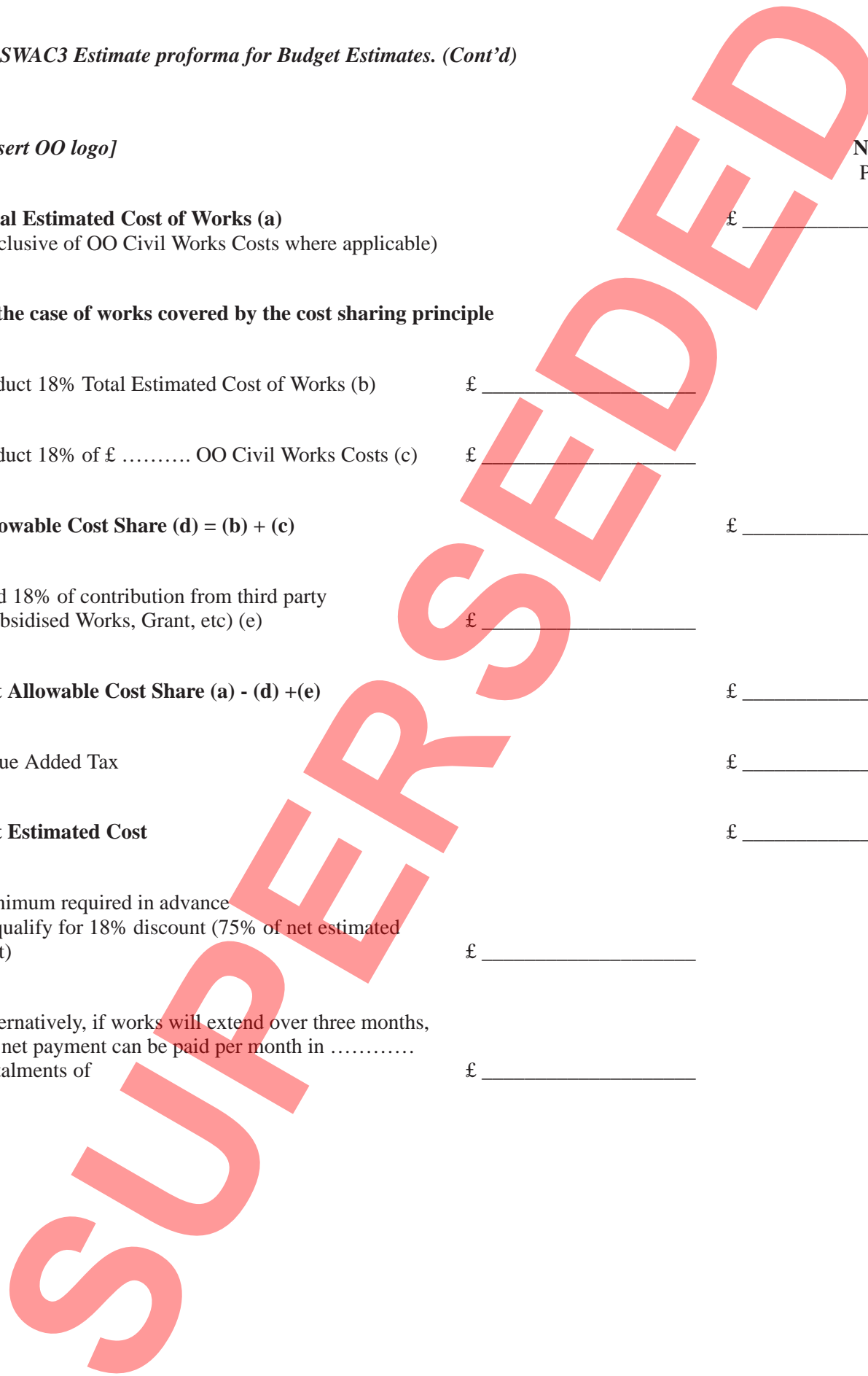
Net Allowable Cost Share (a) - (d) +(e) £ _____

Value Added Tax £ _____

Net Estimated Cost £ _____

Minimum required in advance
to qualify for 18% discount (75% of net estimated
cost) £ _____

Alternatively, if works will extend over three months,
the net payment can be paid per month in
instalments of £ _____



NRSWAC4.1 Detailed Estimate (C4) inquiry letter from PS to Undertaker.

To: *[Undertaker]*

Dear Sirs,

[SCHEME TITLE]

**NEW ROADS AND STREET WORKS ACT 1991 (NRSWA): A CODE OF PRACTICE
“MEASURES NECESSARY WHERE APPARATUS IS AFFECTED BY MAJOR WORKS
(DIVERSIONARY WORKS)” (CoP): APPENDIX C**

DETAILED ESTIMATE (Appendix C4 of the CoP)

Further to previous correspondence *[Insert reference]* and discussions, we attach details of the final specimen scheme design with working drawings and an outline programme. Please provide full details of your requirements as set out in the NRSWA and CoP, Appendix C4 by completing the enclosed proforma NRSWAC4 agreeing the sharing of costs.

This request does not constitute Formal Notice of our intention to proceed with the scheme but will form the basis for the ordering procedure.

**The [Insert name of OO] will accept the costs for the preparation of your C4 estimate.*

We would be grateful if you would supply the information within 25 working days of receipt of this letter. We have appointed an agent to act on our behalf and scheme information should be sent to the address shown below.

***As we have not requested a C3 estimate for this scheme this initial C4 estimate should be provided free of charge.*

It is anticipated that this scheme will be funded wholly by the *[Insert name of OO]*.
[If the scheme is not funded wholly by the OO the PS should inform the Undertaker which party will be paying for its services and the proportion anticipated and replace this paragraph accordingly].

[Optional Paragraph: Insert for OO D&B Contracts:

Please note that we are providing this information to several tenderers under a design and construct tender invitation. Any approach you may receive from a tenderer in regard to this scheme during the tendering process will be a matter between yourself and the tenderer.]

If you wish to discuss this please do not hesitate to contact us.

Yours faithfully,

Project Sponsor

**Delete as appropriate*
***Delete as appropriate*

[OO Agent]

Name: _____
Address: _____

Tel No: _____
Fax No: _____
Email: _____

SUPERSEDED

NRSWAC4 Estimate proforma for Detailed Estimate.

[Insert OO logo]

NRSWAC4
Page 1 of 3

**NRSWA 1991: A CODE OF PRACTICE
“MEASURES NECESSARY WHERE APPARATUS
IS AFFECTED BY MAJOR WORKS
(DIVERSIONARY WORKS)”
C4 Detailed Estimate**

Project No _____
(to be quoted on all correspondence)

Undertaker Ref. _____

Date of Estimate _____

Undertaker _____

Scheme _____

Diversion Ref/Description *[Identify particular alternative route]* _____

Anticipated Duration _____

Base Date _____

Validity Period _____

Method of Dealing with Inflation _____

Cost Estimate Summary:

Direct Labour £ _____

Contract Labour £ _____

Total Labour £ _____

Plant Costs £ _____

Materials Costs £ _____

Other Costs £ _____

Overhead Charges £ _____

Supervision Charges £ _____

Estimated Project Costs £ _____

Less deductions for: _____

Deferment of renewal £ _____

Betterment £ _____

Materials Recovered £ _____

Total Deductions £ _____

NRSWAC4 Estimate proforma for Detailed Estimate. (Cont'd)

[Insert OO logo]

NRSWAC4
Page 2 of 3

Total Estimated Cost of Works (a) £ _____
(exclusive of OO Civil Works Costs where applicable)

In the case of works covered by the cost sharing principle

Deduct 18% Total Estimated Cost of Works (b) £ _____

Deduct 18% of £ OO Civil Works Costs (c) £ _____

Allowable Cost Share (d) = (b) + (c) £ _____

Add 18% of contribution from third party
(Subsidised Works, Grant, etc) (e) £ _____

Net Allowable Cost Share (a) - (d) +(e) £ _____

Value Added Tax £ _____

Net Estimated Cost £ _____

Minimum required in advance
to qualify for 18% discount (75% of net estimated
cost) £ _____

Alternatively, if works will extend over three months,
the net payment can be paid per month in
instalments of £ _____

Notes for C4 Detailed Estimate:

1. Further details to support the cost estimate summary should be provided by the Undertaker and attached to this sheet. The details should include itemised descriptions, rates and quantities for the work, an explanation of 'other costs', a breakdown of overhead and supervision charges and calculations to support any applicable allowances.
2. The age and estimated full life of the apparatus should be stated to enable deferment of renewal calculations to be verified.
3. The PS and OO Agent should note that estimates supplied by the Undertaker may not conform with the above format but should include all requested information.

NRSWAC4 Estimate proforma for Detailed Estimate. (Cont'd)

[Insert OO logo]

NRSWAC4
Page 3 of 3

	CoP Ref
Detailed Specification	ii
Replacement apparatus	ii(a)
Protection work	ii(b)
Advance or offsite work	ii(c)
Construction method and operations sequence	ii(d)
Materials delivery and storage requirements	ii(e)
Route and level requirements etc	ii(f)
Reinstatement requirements etc	ii(g)
Details of temporary works	ii(h)
Special requirements	ii(i)
Commissioning of apparatus	ii(j)
Redundant apparatus	ii(k)
Provisional Programmes	
Site works	iv(a)
Offsite works	iv(b)
Materials on long delivery lead-times	iv(c)
Land purchase	iv(d)
Wayleaves acquisition	iv(e)
Civil Engineering Works undertaken by OO's contractor	v

The above is a check list of the minimum information required by the CoP and should be read in conjunction with the notes for C4 Detailed Estimates on page 2 of 3 of this estimate proforma.

NRSWAC5.1 Letter for Formal Notice from PS to Undertaker

Letter for Formal Notice to Undertaker

* *If no Works Order attached at this time use this paragraph*

** *With Works Order for advance ordering of materials only use this paragraph*

*** *With Works Order for ordering of materials and advance works use this paragraph*

To: [Undertaker]

Dear Sirs,

[SCHEME TITLE]

**NEW ROADS AND STREET WORKS ACT 1991 (NRSWA): A CODE OF PRACTICE
“MEASURES NECESSARY WHERE APPARATUS IS AFFECTED BY MAJOR WORKS
(DIVERSIONARY WORKS)” (CoP): APPENDIX C**

FORMAL NOTICE (Appendix C5 of the CoP)

Notice is hereby given that the [Insert name of OO] intends to proceed with the [Insert scheme title] scheme.

* *An Official Works Order in accordance with the CoP will be issued in due course.*

** *An Official Works Order in accordance with the CoP is attached to enable you to proceed with advance ordering of those materials that have long delivery periods.*

*** *An Official Works Order in accordance with the CoP is attached to enable you to proceed with advance ordering of those materials that have long delivery periods and to undertake those works specified on the Works Order which require more extensive preparation.*

Please acknowledge receipt of this notice and let me know if you have any queries.

Yours faithfully,

Project Sponsor

* *Delete as appropriate*

** *Delete as appropriate*

*** *Delete as appropriate*

(Note: This standard letter can only be issued by the PS in England and Wales. In Scotland this letter may be issued by OO Agents.)

NRSWAC5.2 Letter informing Undertaker of Order for Advance Works & expected date of Main Works

To: *[Undertaker]*

Dear Sirs,

[SCHEME TITLE]

**NEW ROADS AND STREET WORKS ACT 1991 (NRSWA): A CODE OF PRACTICE
“MEASURES NECESSARY WHERE APPARATUS IS AFFECTED BY MAJOR WORKS
(DIVERSIONARY WORKS)” (CoP): APPENDIX C**

ORDER FOR ADVANCE WORKS AND NOTIFICATION OF EXPECTED DATE OF MAIN WORKS

Further to the Formal Notice for the above scheme *[Insert date]* we enclose Works Order No *[Insert Order number]* in relation to the Advance Works and it is expected that the Main Works will commence on *[Insert proposed commencement date]*.

Yours faithfully,

Project Sponsor

NRSWAC6.1 Letter for Contract Information from PS to Undertaker.

To *[Undertaker]*

Dear Sirs,

[SCHEME TITLE]

**NEW ROADS AND STREET WORKS ACT 1991 (NRSWA): A CODE OF PRACTICE
“MEASURES NECESSARY WHERE APPARATUS IS AFFECTED BY MAJOR WORKS
(DIVERSIONARY WORKS)” (CoP): APPENDIX C**

CONTRACT INFORMATION

We write to advise you of details of the above scheme:

- i) The name, address and phone number of the OO contractor is
Contacts:
- ii) The name, address and phone number of the OO Agent is *[may include more than one]*
Contacts:
- iii) The commencing date of the contract is

We would be grateful if you could notify us of the names of your representatives and contractor.

Please address all correspondence to the *[Insert name of OO Agent]*.

If you have any queries please do not hesitate to contact us.

Yours faithfully,

Project Sponsor

NRSWAC6.2 Covering Letter for Official Works Order from PS to Undertaker

To: *[Undertaker]*

Dear Sirs,

[SCHEME TITLE]

**NEW ROADS AND STREET WORKS ACT 1991 (NRSWA): A CODE OF PRACTICE
“MEASURES NECESSARY WHERE APPARATUS IS AFFECTED BY MAJOR WORKS
(DIVERSIONARY WORKS)” (CoP): APPENDIX C**

OFFICIAL WORKS ORDER

We attach an Official Works Order requesting you to carry out works as detailed in your letter(s) dated *[Insert date of letter(s)]*

Please note that invoices should refer to this Official Works Order and should be comparable with your detailed estimate provided in accordance with Appendix C4 of the CoP.

If you wish to discuss this please do not hesitate to contact us.

Yours faithfully,

Project Sponsor

NRSWAC6.3 Official Works Order

[Insert OO logo]

NRSWAC6.3
Page 1 of 1

NRSWA 1991: A CODE OF PRACTICE
“MEASURES NECESSARY WHERE APPARATUS IS
AFFECTED BY MAJOR WORKS (DIVERSIONARY
WORKS)”

C6 Official Works Order

Scheme	Order Ref
<input type="text"/>	<input type="text"/>
Project No. (To be quoted on all invoices and correspondence)	Estimate Reference & Date
<input type="text"/>	<input type="text"/>
To (Supplier)	Invoices to be sent to
<input type="text"/>	<input type="text"/>

Diversion	OO Ref	Undertaker Ref	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Description of work to be carried out	Estimated Value £
<input type="text"/>	<input type="text"/>
Net total	<input type="text"/>
Acknowledgement of this order is/is not required*	<input type="text"/>
<i>*delete as appropriate</i>	<input type="text"/>

Ordered on behalf of the OO

Signature

Position

Date

Name and Address

Telephone Number

For Official OO Use Only

Supplier No.	†T3 Vote Code	†T5 Cost Centre
<input type="text"/>	<input type="text"/>	<input type="text"/>

†Amend to include relevant OO codings.

NRSWAC7.1 Official Works Order –Agreed Variation/Record of Change

[Insert OO logo]

NRSWAC7.1
Page 1 of 1

**NRSWA 1991: A CODE OF PRACTICE
“MEASURES NECESSARY WHERE APPARATUS IS
AFFECTED BY MAJOR WORKS (DIVERSIONARY
WORKS)”**

Works Order – Agreed Variation/Record of Change

Date Variation/Change No

Scheme

Project No. (To be quoted on all correspondence)

Official Works Order Reference

Diversion Reference & Date

OO Ref	<input type="text"/>
Undertaker Ref	<input type="text"/>

OO Ref	<input type="text"/>
Undertaker Ref	<input type="text"/>

Undertaker

Contractor

Reason for Issue

Variation Code#

Insert code as appropriate
H = OO Liability
C = Contractor Liability
U = Undertaker Liability
O = Others

Estimated Value†

Description of Varied Works

<input type="text"/>	Add	£	<input type="text"/>
	Omit	£	<input type="text"/>
	Total	£	<input type="text"/>

Acknowledgement of this variation is/is not* required

* delete as appropriate

Signature OO Agent
Position

Name and Address

Signature Undertaker
Position

Name and Address

† The OO Agent shall attempt to secure the estimated value of all Agreed Variations from the Undertaker at agreement.

NRSWAC9.1 Final Account

[Insert OO logo]

NRSWAC9.1
Page 1 of 2

**NRSWA 1991: A CODE OF PRACTICE
"MEASURES NECESSARY WHERE APPARATUS
IS AFFECTED BY MAJOR WORKS
(DIVERSIONARY WORKS)"**

Project No _____
(to be quoted on all correspondence)

Undertaker Ref. _____

Final Account

Date of Final Account _____

Undertaker _____

Scheme _____

Diversion Ref/Description _____

Actual Duration _____

Base Date _____

Validity Period _____

Method of Dealing with Inflation _____

Cost Summary:

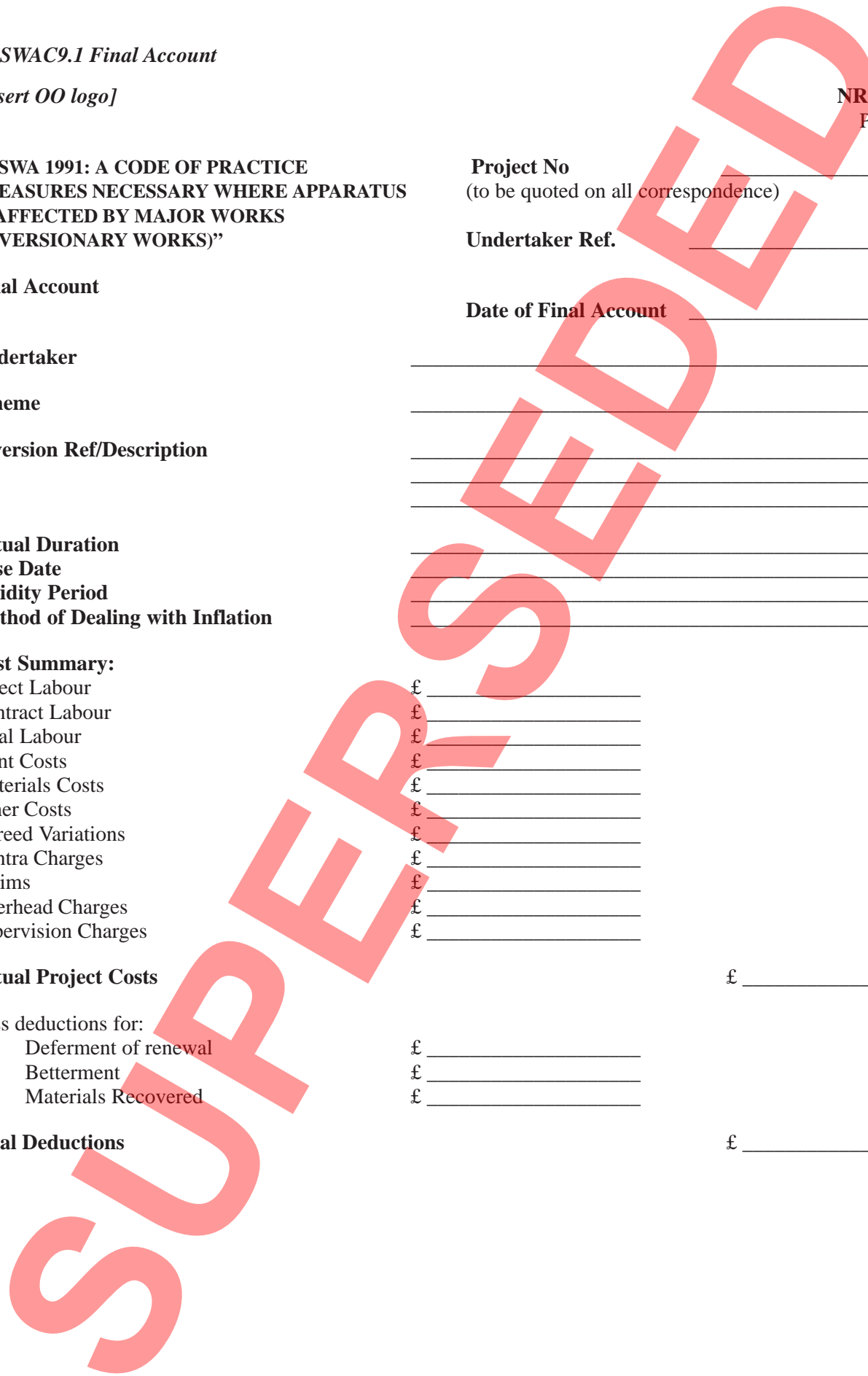
Direct Labour	£	_____
Contract Labour	£	_____
Total Labour	£	_____
Plant Costs	£	_____
Materials Costs	£	_____
Other Costs	£	_____
Agreed Variations	£	_____
Contra Charges	£	_____
Claims	£	_____
Overhead Charges	£	_____
Supervision Charges	£	_____

Actual Project Costs £ _____

Less deductions for:

Deferment of renewal	£	_____
Betterment	£	_____
Materials Recovered	£	_____

Total Deductions £ _____



NRSWAC9.1 Final Account (Cont'd)

NRSWAC9.1
Page 2 of 2

Total Cost of Works (a) £ _____
(exclusive of OO Civil Works Costs where applicable)

In the case of works covered by the cost sharing principle

Deduct 18% Total Cost of Works (b) £ _____

Deduct 18% of £ OO Civil Works Costs (c) £ _____

Allowable Cost Share (d) = (b) + (c) £ _____

Add 18% of contribution from third party
(Subsidised Works, Grant, etc) (e) £ _____

Net Allowable Cost Share (a) - (b)+(e) £ _____

Value Added Tax £ _____

Net Final Cost £ _____

Deduct Advance Payment if applicable (75% of C4 Detailed Estimate) £ _____

FINAL PAYMENT DUE £ _____

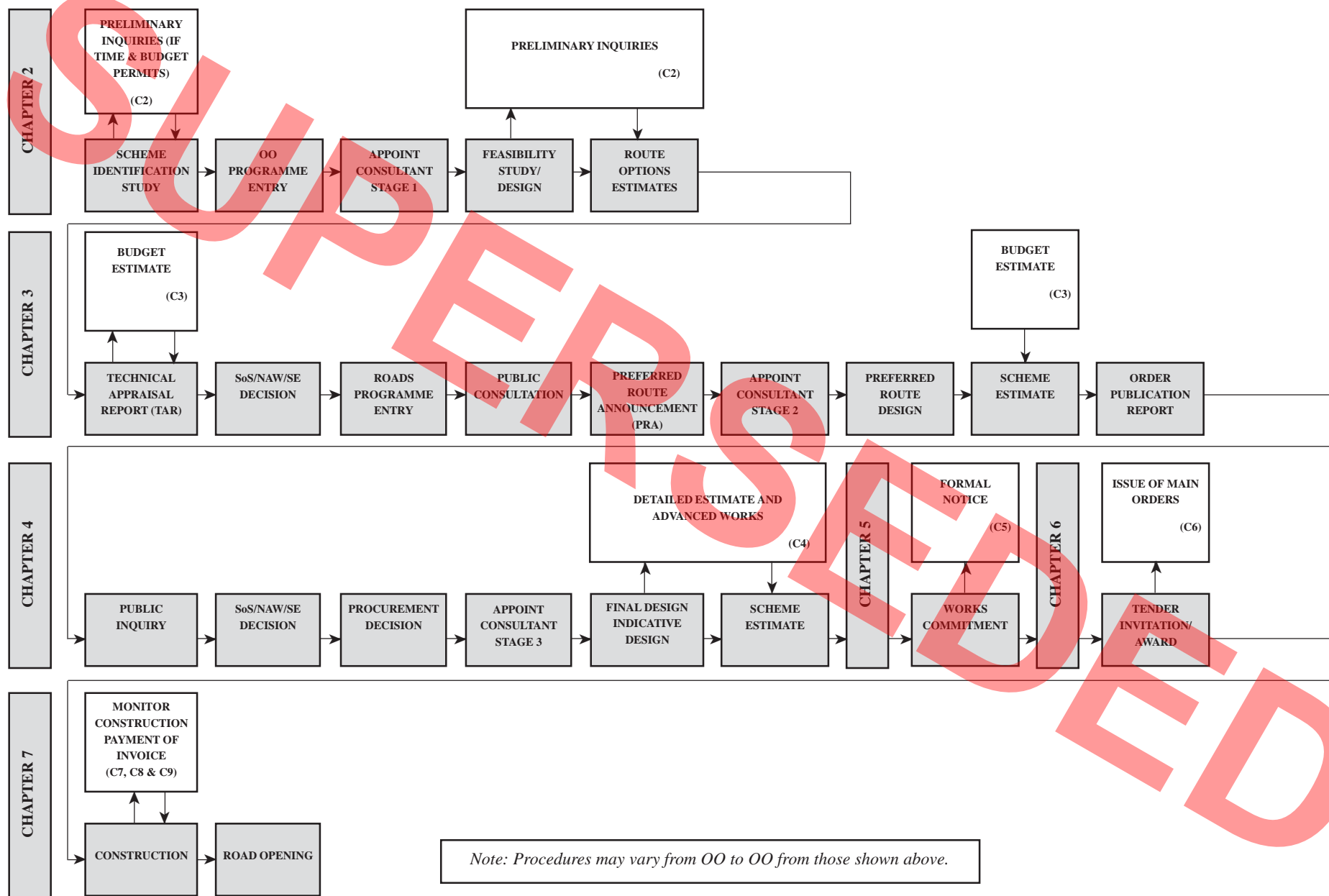
Note:

1. Further details to support the Final Account summary should be provided by the Undertaker and attached to this sheet. The details should include itemised descriptions, rates and quantities for the work, an explanation of 'other costs', a breakdown of overhead and supervision charges and calculations to support any applicable allowances.
2. The age and estimated full life of the apparatus should be stated to enable deferment of renewal calculations to be verified.
3. The PS and OO Agent should note that estimates supplied by the Undertaker may not conform with the above format but should include all requested information.

ANNEX 3 - FLOWCHART AND PROCEDURAL GUIDE

SUPERSEDED

FLOWCHART FOR PLANNING AND IMPLEMENTATION OF SCHEMES



Note: Procedures may vary from OO to OO from those shown above.

PROCEDURAL GUIDE FOR PLANNING AND IMPLEMENTATION OF SCHEMES

DOC REF	STAGE	PS ACTION	AGENT ACTION	UNDERTAKER RESPONSE TIME	OO PAYMENTS
Ch 2	Preliminary Inquiries (C2)	PS makes preliminary inquiry using standard letter NRSWAC2.1 or instructs agent using NRSWAC2.2.	If appointed the OO Agent makes preliminary inquiry using standard letter NRSWAC2.3.	10 working days	No charge to OO from Undertakers for preliminary inquiries.
Ch 3	Budget Estimates (C3)	PS issues request letter NRSWAC3.1 for budget estimate.	OO Agent prepares requests for budget estimates from Undertakers using standard letter NRSWAC3.1 and proforma NRSWAC3 for issue by PS.	20 working days	No charge to OO from Undertakers for C3 budget estimates.
Ch 4	Detail Estimates (C4)	PS issues request letter NRSWAC4.1 for detailed estimate.	OO Agent prepares requests for detailed estimates from Undertakers using standard letter NRSWAC4.1 and proforma NRSWAC4 for issue by PS.	25 working days	OO pay Undertakers for C4 estimates. OO do not pay for C4 estimate when no C3 estimate has been prepared by Undertaker.
Ch 5	Notices (C5)	PS issues Formal Notice letter NRSWAC5.1 to Undertakers. PS issues Advance Order letter NRSWAC5.2. PS issues Formal Notice to holder of Street Works Register.	OO Agent prepares standard Formal Notice letter NRSWAC5.1 (with Works Orders if applicable). OO Agent prepares Works Orders for advance materials or works if not despatched under Formal Notice letter using standard letter NRSWAC5.2.	N/A	N/A
Ch 6	Issue of Main Orders (C6)	PS issues Contract Information letter NRSWAC6.1 to Undertakers. PS issues Official Works Order letter NRSWAC6.2.	OO Agent prepares Official Works Order using proforma NRSWAC6.3 and standard letter NRSWAC6.2.	N/A	OO pay share of Allowable Costs.
Ch 7	Monitoring Progress (C7)	PS approves or obtains approval of Works Order/Agreed Variation when satisfied.	OO Agent agrees and prepares Works Order – Agreed Variation/Record of Change using proforma NRSWAC7.1.	N/A	OO pay share of Allowable Costs.
Ch 8	Claims (C8)		OO Agent informs the PS immediately of any claims relating to Undertakers' work and maintains records.	N/A	OO pay only where financial loss can be demonstrated.
Ch 9	Invoicing and Payment (C9)	PS approves or obtains approval of Final Account and passes for payment.	OO Agent ensures final invoice conforms with proforma NRSWAC9.1 Final Account. OO Agent checks and certifies invoice and passes to PS for approval.	N/A	OO pay share of Allowable Costs.