

## **Appendix 1 – Proposed Targeted Support Schemes – Challenge Fund Works**

### **Option A – Compensation Scheme**

#### **Activation**

**1. This scheme “The Scheme” shall come into force on the date so decided by the Council for the purposes of works undertaken by Herefordshire Council “the Council” in regard to the works described in the Council’s successful bid to the Departments for Transport’s Tranche 2A of the Local Highway Maintenance Challenge Fund. The Scheme shall have effect in relation to relevant works begun on or after the 1 August 2017.**

#### **Interpretation**

**2.**

(1) In this scheme, except where the context otherwise requires —

“the 1991 Act” means the New Roads and Street Works Act 1991;

“annual turnover” means such turnover determined as mentioned in Section 4;

“relevant works” means works undertaken by, or on behalf of the Council, under a closure of a road to which the claimants business fronts or is accessed by its customers from a point located within 500m on a side road to the main road that is closed to through traffic as part of the works described in the Council’s bid to Tranche 2A of the Local Highway Maintenance Challenge Fund.

“small business” has the meaning assigned thereto by Section 3.

(2) In this Scheme, “company” means a company within the meaning of section 735 of the Companies Act 1985 and, for the purposes of this Scheme, “financial year” in relation to a company shall be determined as provided in section 223 of that Act.

(3) In this Scheme a reference to a section is a reference to a section thereof and a reference in a section to a paragraph is a reference to a paragraph of that section.

#### **Meaning of “small business”**

**3.**

(1) Subject to paragraph (2), for the purposes of this scheme “small business” means a business conducted at particular premises in Herefordshire the annual turnover of which (determined as provided in section 4) does not exceed the amount determined as mentioned in paragraph (4).

(2) A business shall not be a small business for the purposes of this scheme if —

(a) the person conducting that business (“the business in question”), or any related person, conducts one or more like businesses at premises other than those at which the business in question is conducted, and

(b) the annual turnover of the business in question, when aggregated with the annual turnovers of each of the like businesses, exceeds the amount determined as mentioned in paragraph (4).

(3) In paragraph (2), “related person” means —

(a) in relation to an undertaking within the meaning of section 259 of the Companies Act 1985 (“the principal undertaking”), a parent or subsidiary undertaking of the principal undertaking or a subsidiary undertaking of a parent undertaking of the principal undertaking, in each case within the meaning of section 258 of that Act, and,

(b) in relation to any person (including such an undertaking), a connected person of that person within the meaning of section 286 of the Taxation of Chargeable Gains Act 1992.

(4) For the purposes of the application of this scheme in relation to particular relevant works, the amount referred to in paragraph (1) or (2) shall be determined by reference to the year beginning with 1st March within which the date on which the relevant works in question were completed falls (“the year in question”) and shall be —

(a) in the case of the year beginning with 1st March 1996, £1,000,000, or

(b) in the case of a subsequent year, that amount multiplied by the appropriate factor mentioned in paragraph (5) except that any fraction of £1,000 in that product shall be disregarded.

(5) The appropriate factor referred to in paragraph (4)(b) shall be obtained by dividing the retail price index for the first month of the year in question by the retail price index for March 1996.

(6) A reference in paragraph (5) to the retail price index is a reference to the general index of retail prices (for all items) published by the Central Statistical Office of the Chancellor of the Exchequer; and if that index is not published for any month that reference shall be read as a reference to any substituted index or index figures published by that Office for that month.

#### **Determination of annual turnover**

#### **4.**

In the application of this scheme in relation to particular relevant works, the annual turnover of a business shall be determined —

(a) in the case of a business conducted by a person other than a company, by reference to the period of a year in respect of which the accounts of the business (or, if the business is part of a larger business and there are no separate accounts, the accounts of that larger business) are drawn up last ending before the date on which the relevant works in question were completed, or

(b) in the case of a business conducted by a company, by reference to the financial year of that company last ending before that date,

except that —

(i) in the case of a business conducted by a person other than a company, if the accounts for the period last ending before the date on which the relevant works in question were completed were for a period longer or shorter than a year or, in the case of a business conducted by a company, the financial year of that company last so ending was a period longer or shorter than a year, the annual turnover of the business shall be determined proportionately by reference to the longer or shorter period in question, and

(ii) where the business was not conducted throughout the period by reference to which the annual turnover would otherwise fall to be determined, or there were no accounts for a period ending, or no financial year ending, before the relevant works in question were completed, the annual turnover thereof shall be taken to be such as, on reasonable assumptions and having regard to such information as is available, appears to be likely to be the annual turnover of the business.

## **Compensation of small businesses for loss of turnover sustained in consequence of works**

### **5.**

(1) Where —

(a) The Council executes any relevant works which are not completed within the period of 28 days beginning with the day on which they were begun (“the works in question”), and

(b) any person conducting a small business, as respects that business, sustains, in consequence of the works in question, a loss of turnover during the period mentioned in paragraph (2),

the Council shall pay to that person, by way of compensation for such loss, an amount calculated as provided in paragraph (3) unless the amount so calculated is less than £500 or does not exceed 2½% of the annual turnover of the business. The amount paid shall not in any case exceed the sum derived via the following formula the maximum ratable value for a business premises to be considered as a premises for a small business which is £51,000 multiplied by the overall duration of the relevant works in weeks (or part thereof), divided by 52 Weeks.

(2) The period referred to in paragraph (1)(b) is a period of not less than 28 days —

(a) beginning with —

(i) the day on which the works in question were begun or, if later,

(ii) the day on which such loss was first so sustained or, where different, which immediately followed that on which the small business was last open for business before the day on which such loss was first so sustained, and

(b) ending with —

(i) the day on which such loss was last so sustained or, where different, which immediately preceded that on which the small business was first open for business after the day on which such loss was last so sustained or, if earlier,

(ii) the day 10 days after the completion of the works in question.

(3) The amount of the compensation referred to in paragraph (1) shall be calculated by determining A and B and then subtracting B from A, the amount so arrived at being the amount of the compensation, where —

- “A” is the amount of the profit or loss that could reasonably have been expected to accrue to the small business during the period mentioned in paragraph (2) if the works in question had not been executed, and
- “B” is the amount of the profit or loss that accrued to that business during that period, a loss being treated as a negative amount.

(4) No compensation referable to particular relevant works shall be payable to a person under this scheme unless —

(a) within 3 months of the completion of those works, he has reserved the right to claim compensation under this scheme by written notice, identifying the works in question, given to the Council by which those works were executed, and

(b) within 6 months of the completion of those works, he has provided the Council with a statement of facts and a summary of evidence (including, where appropriate, extracts from accounts and other documents) sufficient to establish, *prima facie*—

(i) that the person claiming compensation was such a person as is mentioned in paragraph (1)(b) who, as respects a small business, sustained such loss as is there mentioned;

(ii) the annual turnover of the small business as respects which that loss was sustained and the annual turnover of any like business referred to in section 3(2)(a);

(iii) the period satisfying the criteria in paragraph (2) during which that loss was sustained, and

(iv) the amount of the compensation for that loss calculated as provided in paragraph (3).

### **Limitation of Liability**

#### **6**

(1) The Council’s total liability to all business who claim under this scheme shall not exceed £150,000.

(2) In the event that the total sum claimed under this scheme exceeds the sum stated in paragraph (1) the sums paid to all claimants shall all be proportionately reduced so that the sum paid does not exceed the sum stated in paragraph (1).

(3) This as the general rule is that there is no compensation if a business is affected by road works. The Council has entered into this scheme voluntarily. No businesses have the right in law to any particular given level of passing trade, and that traders must take the risk of loss due to temporary disruption of traffic flows along with all the other various risks of running a business. There is no statutory provision for compensation by the highway authority if a business is affected by road works.

### **Advance Payment**

#### **7**

(1) If requested by any valid claimant the Council shall make advance payment of a sum not exceeding a sum derived via the following formula, the maximum rateable value of the

claimant's small business, multiplied by the anticipated duration of the relevant works in weeks (or part thereof), divided by 52 Weeks.

(2) if the sum paid by the Council in paragraph (1) exceeds the sum due in accord with section 5, then the claimant shall repay the excess to the council within 28 days of request.

## **Option B – Support Grant Scheme**

### **Activation**

**1. This scheme “The Scheme” shall come into force on the date so decided by the Council for the purposes of works undertaken by Herefordshire Council “the Council” in regard to the works described in the Council’s successful bid to the Departments for Transport’s Tranche 2A of the Local Highway Maintenance Challenge Fund. The Scheme shall have effect in relation to relevant works begun on or after the 1 August 2017.**

### **Interpretation**

#### **2.**

(1) In this scheme, except where the context otherwise requires —

“the 1991 Act” means the New Roads and Street Works Act 1991;

“annual turnover” means such turnover determined as mentioned in Section 4;

“relevant works” means works undertaken by, or on behalf of the Council, under a closure of a road to which the claimants business fronts or is accessed by its customers from a point located within 500m on a side road to the main road that is closed to through traffic as part of the works described in the Council’s bid to Tranche 2A of the Local Highway Maintenance Challenge Fund.

“small business” has the meaning assigned thereto by Section 3.

(2) In this Scheme, “company” means a company within the meaning of section 735 of the Companies Act 1985 and, for the purposes of this Scheme, “financial year” in relation to a company shall be determined as provided in section 223 of that Act.

(3) In this Scheme a reference to a paragraph is by number and a reference to a subparagraph is the one within the same paragraph unless stated otherwise.

### **Meaning of “small business”**

#### **3.**

(1) Subject to subparagraph (2), for the purposes of this scheme “small business” means a business conducted at particular premises affected by the relevant works, in Herefordshire with a rateable value of less than £51,000 and the use of those premises is classified, in accord with The Town and Country Planning (Use Classes) Order 1987, as Class A1 Shops; or Class A3 Food and drink; or Class C1 Hotels and hostels.

(2) A business shall not be a small business for the purposes of this scheme if —

(a) the person conducting that business (“the business in question”), or any related person, conducts one or more same or similar businesses at premises other than those affected by the relevant works.

(3) In subparagraph (2), “related person” means —

(a) in relation to an undertaking within the meaning of section 259 of the Companies Act 1985 (“the principal undertaking”), a parent or subsidiary undertaking of the principal undertaking or a subsidiary undertaking of a parent undertaking of the principal undertaking, in each case within the meaning of section 258 of that Act, and,

(b) in relation to any person (including such an undertaking), a connected person of that person within the meaning of section 286 of the Taxation of Chargeable Gains Act 1992.

4.

Not used

### **Support Grant to small businesses**

5.

(1) Where —

(a) The Council executes any relevant works which are not completed within the period of 28 days beginning with the day on which they were begun (“the works in question”),

the Council shall pay to that person an amount calculated as provided in sub paragraph (2).

(2) The amount paid shall not in any case exceed the sum calculated as (the maximum ratable value for a business premises as set out in definitions for a small business) £51,000 multiplied by the planned overall duration of the relevant works in weeks (or part thereof), divided by 52 weeks.

(3) The duration period referred to in sub paragraph (2) is a period of not less than 28 days —

(a) beginning with —

(i) the day on which the works in question were begun or, if later, and

(b) ending with —

(i) the day of completion of the works in question.

(3) The amount referred to in sub paragraph (2) shall be calculated by the following formula:

The ratable value for the business premises of the business in question, multiplied by 1.5 times the actual overall duration of the relevant works in weeks (or part thereof) divided by 52 weeks.

(4) No sum referable to particular relevant works shall be payable to a person under this scheme unless —

(a) within 3 months of the completion of those works, he has reserved the right to claim under this scheme by written notice, identifying the works in question, given to the Council by which those works were executed

## **Limitation of Liability**

### **6**

(1) The Council's total liability to all business who claim under this scheme shall not exceed £150,000.

(2) In the event that the total sum claimed under this scheme exceeds the sum stated in sub paragraph (1) the sums paid to all claimants shall all be proportionately reduced so that the sum paid does not exceed the sum stated in sub paragraph (1).

(3) No payment would be made in the circumstance that businesses have the facility to mitigate the impact of these closures through their own business interruption insurance.

(4) The general rule is that there is no compensation if a business is affected by road works. The Council has entered into this scheme voluntarily. No businesses have the right in law to any particular given level of passing trade, and that traders must take the risk of loss due to temporary disruption of traffic flows along with all the other various risks of running a business. There is no statutory provision for compensation by the highway authority if a business is affected by road works. This scheme is offered in the exceptional circumstances of the 2017 Tranche 2A Local Highway Maintenance Challenge Fund.