

SCHEDULES

SCHEDULE 2

Article 5

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

“County Archaeologist” means the individual nominated or appointed as such by the relevant planning authority;

“DAMS and OWSI” means the document of that description listed in Schedule 9 (documents to be certified) and certified by the Secretary of State as the Detailed Archaeological Mitigation Strategy and the Overarching Written Schemes of Investigation for the purposes of this Order;

“Design Summary Report” means document of that description listed in Schedule 9 (documents to be certified) and certified by the Secretary of State as the Design Summary Report for the purposes of this Order;

“Ecological Clerk of Works” means the individual appointed as such by the undertaker;

“EMP (construction stage)” means the construction stage environmental management plan to be submitted and approved under requirement 3 of this Schedule;

“EMP (end of construction stage)” means the end of construction stage environmental management plan to be developed towards the end of the construction of the authorised development which is to contain—

- (a) the environmental information needed for the future maintenance and operation of the authorised development;
- (b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and
- (c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies;

“Historic England” means the Historic Buildings and Monuments Commission for England established under the National Heritage Act 1983(b), the functions of which include acting as a statutory consultee and advising the government on the historic environment, including advice to the Department of Digital, Culture, Media and Sport;

“LEMP” means the landscape and ecological management plan;

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“Manual of Contract Documents for Highway Works” means the document of that name published electronically by or on behalf of the strategic highway authority for England, or any equivalent replacement published for that document;

“protected species” means species which are subject to protection under the laws of England or which are European protected species;

“structures engineering drawings and sections” means the document of that description listed in Schedule 9 (documents to be certified) and certified by the Secretary of State as the structures engineering drawings and sections for the purposes of this Order.

Time limits

2. The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

Environmental Management Plan (Construction Stage)

3.—(1) No part of the authorised development is to commence until a EMP (construction stage) for that part has been prepared in consultation with the relevant planning authority, the local highway authority and Natural England and submitted to and approved in writing by the Secretary of State.

(2) The EMP (construction stage) must—

- (a) be substantially in accordance with the environmental management plan (design stage) certified under article 46 (certification of plans etc.);
- (b) contain a record of all the sensitive environmental features that have the potential to be affected by the construction of the authorised development;
- (c) incorporate the measures referred to in the environmental statement as being incorporated in the EMP (construction stage);
- (d) require adherence to working hours of 07:30 to 18:00 on Mondays to Friday and 08:00 to 13:00 on Saturdays, Sundays and public holidays, except for—
 - (i) night-time closures for bridge demolition and installation;
 - (ii) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
 - (iii) junction tie-in works;
 - (iv) removal of overhead power lines;
 - (v) overnight traffic management measures;
 - (vi) cases of emergency;
 - (vii) any works for which different working hours have been agreed with parties who will or may be affected by those works and recorded in the approved EMP (construction stage), in which case the EMP (construction stage) must require adherence to those working hours; and
 - (viii) as otherwise agreed by the relevant planning authority in advance;
- (e) include the following management plans—
 - (i) Construction Traffic Management Plan;
 - (ii) LEMP;
 - (iii) Materials Management Plan;
 - (iv) Public Rights of Way Management Plan; and
 - (v) Ground and Surface Water Management Plan.

(3) The authorised development must be constructed in accordance with the approved EMP (construction stage).

(4) Upon completion of construction of the authorised development the EMP (construction stage) must be converted into the EMP (end of construction stage). The EMP (end of construction phase) must be submitted to the Secretary of State for approval within 28 days of the opening of the authorised development for public use.

(5) The authorised development must be operated and maintained in accordance with the EMP (end of construction stage) approved under sub-paragraph (4).

Details of consultation

4.—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule following consultation with another party, the details submitted must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation.

(2) At the time of submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to under sub-paragraph 1 to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.

(3) The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality.

(4) Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to under sub-paragraph (1) the reasons why the consultation responses have not been reflected in the submitted details.

Landscaping

5.—(1) No part of the authorised development is to commence until a written landscaping scheme for that part has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority, the local highway authority and Natural England.

(2) No part of the authorised development, including vegetation clearance, is to commence until an arboricultural walkover survey and tree survey for that part, taking due regard to the guidance in British Standard 5837:2012, have been undertaken to identify any significant constraints posed by trees.

(3) The landscaping scheme prepared under sub-paragraph (1) must be based on the environmental masterplan and the results of the surveys undertaken under sub-paragraph (2).

(4) The landscaping scheme prepared under sub-paragraph (1) must include details of hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) details of existing trees to be retained, with measures for their protection during the construction period; and
- (f) implementation timetables for all landscaping works.

Implementation and maintenance of landscaping

6.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 5.

(2) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice, and in accordance with the LEMP approved as part of the EMP (construction stage) and EMP (end of construction stage) under requirement 3.

(3) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

Fencing

7. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

Land and groundwater contamination

8.—(1) No part of the authorised development is to commence until a contamination risk assessment in respect of controlled waters has been produced for that part which is to include details of—

- (a) any existing sources of contamination within the Order limits that may be affected by the carrying out of the authorised development;
- (b) any reasonably required protective measures to ensure that the carrying out of the authorised development does not make worse any adverse conditions or risks associated with such existing sources of contamination; and
- (c) appropriate remediation strategies and mitigation measures to address any historic contamination which is shown to be having significant, unacceptable effects on the environment within the context of the proposed works,

and the assessment has been submitted to and approved by the Secretary of State following consultation with the Environment Agency.

(2) The steps and measures that are identified as necessary for the purposes of carrying out the authorised development in the assessment referred to in sub-paragraph (1) must be implemented as part of the authorised development.

(3) In the event that contaminated material, including impacted groundwater, is found at any time when carrying out the authorised development, which was not previously identified in the environmental statement, the undertaker must cease construction of the authorised development in the vicinity of that contamination and must report it immediately in writing to the Secretary of State, the Environment Agency and the relevant planning authority, and in agreement with the Environment Agency and the relevant planning authority undertake a risk assessment of the contamination, and sub-paragraphs (4) and (5) will apply.

(4) Where the undertaker determines that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be prepared submitted to and approved in writing by the Secretary of State following consultation with the Environment Agency and the relevant planning authority.

(5) Remedial measures must be carried out in accordance with the approved scheme.

Archaeology

9.—(1) No part of the authorised development is to commence until for that part a site-specific written scheme of investigation for each area and each phase (evaluation or detailed excavation or watching brief), has been prepared in accordance with the DAMS and OWSI in consultation with the relevant planning authority and the local highway authority, agreed with the County Archaeologist in consultation with Historic England and submitted to and approved in writing by the Secretary of State.

(2) The authorised development must be carried out in accordance with the DAMS and OWSI and site-specific written schemes of investigation referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State.

(3) A programme of archaeological reporting, post excavation and publication required as part of the DAMS and OWSI and site –specific written schemes of investigation referred to in sub-paragraph (1) must be agreed with the County Archaeologist in consultation with Historic England and implemented within a timescale agreed with the County Archaeologist and the report deposited with the Historic Environment Record of the relevant planning authority within two years of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority.

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be—

- (a) retained in situ and reported to the County Archaeologist as soon as reasonably practicable; and
- (b) subject to appropriate mitigation as set out in the DAMS and OWSI and mitigation agreed with the County Archaeologist.

(5) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (4) for a period of 14 days from the date the remains are reported to the County Archaeologist under sub-paragraph (4) unless otherwise agreed in writing by the Secretary of State.

(6) Prior to commencement of the authorised development, suitable resources and provisions for long term storage of the archaeological archive must be agreed with the County Archaeologist.

Protected species

10.—(1) In the event that any protected species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must cease construction works near their location and report it immediately to the Ecological Clerk of Works.

(2) The undertaker must prepare a written scheme for the protection and mitigation measures for any protected species that were not previously identified in the environmental statement or nesting birds found when carrying out the authorised development. Where nesting birds are identified works should cease within 10 metres of the nest until birds have fledged and the nest is no longer in use.

(3) The undertaker must implement the written scheme prepared under sub-paragraph (2) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

Detailed design

11.—(1) The authorised development must be designed in detail and carried out so that it is compatible with—

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- (a) the preliminary scheme design shown on the works plans, the general arrangement plans, the engineering drawings and sections, and the structures engineering drawings and sections; and
- (b) the design principles set out in the Design Summary Report,

unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the works plans, the general arrangement plans, the engineering drawings and sections or the structures engineering drawings and sections showing departures from the preliminary design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding works plans, general arrangement plans, engineering drawings and sections or the structures engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Surface and foul water drainage

12.—(1) No part of the authorised development is to commence until written details of the surface and foul water drainage system for that part, reflecting the mitigation measures in chapter 13 (Road Drainage and the Water Environment) of the environmental statement and including means of pollution control, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority, the local highway authority and the Environment Agency.

(2) The drainage system must be constructed in accordance with the approved details referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority, the local highway authority and the Environment Agency.

Noise Mitigation

13.—(1) No part of the authorised development is to commence until written details of proposed noise mitigation in respect of the use and operation of that part of the authorised development, including noise barriers and any very low noise surfacing, have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

(2) The written details referred to in sub-paragraph (1) must—

- (a) reflect the mitigation measures included in the environmental statement or,
- (b) where the mitigation proposed materially differs from the mitigation identified in the environmental statement, provide evidence that the mitigation proposed would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement taking into account the mitigation identified in it.

(3) The noise mitigation must be constructed in accordance with the approved details referred to in sub-paragraph (1) and must be retained thereafter.

Approvals and amendments to approved details

14. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed in writing by the Secretary of State.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

15.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) included in this Order, the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under requirement 16; or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report referred to in requirement 15 stating that, in the view of a body required to be consulted by the undertaker under the requirement in question, the subject matter of the application is likely to give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement,

then the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

16.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary, the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the Secretary of State does not give such notification within this 21 day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this requirement in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in requirement 18 of this Schedule and in this requirement.

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(4) In this requirement, “business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971⁽¹⁾.

Register of requirements

17.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

Anticipatory steps towards compliance with any requirement

18. If before this Order came into force the undertaker or any other person took any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

(1) 1971 c. 80.