

SCHEDULES

SCHEDULE 3

Section 9.

PLANNING PERMISSION

Preliminary

1 In this Schedule—

"authorised development" means development to which the planning permission deemed by section 9(1) of this Act to have been granted under Part III of the Act of 1971 relates;

"spoil" means spoil from tunnelling works; and

"surplus spoil" means spoil which is not used for the purposes of any of the works authorised by this Act.

Scheme of operation for authorised development

2 Any authorised development shall be carried out in accordance with a scheme of operation consisting of the arrangements with respect to the matters mentioned in the left-hand column of the following table which the appropriate planning authority have, at the request of the Concessionaires, for the time being approved as the arrangements which are to be adopted in carrying out the development to which the scheme relates.

The only grounds on which the authority may refuse to approve arrangements with respect to any matter so mentioned (including arrangements modifying or replacing any arrangements previously approved) are—

- (a) that the arrangements relate to development which, for the purposes of regulating the matter in question, ought to and can reasonably be considered in conjunction with other authorised development which is to be carried out in the authority's area; and
- (b) the ground specified in relation to that matter in the right-hand column of the table.

THE TABLE

| <i>Matters</i> | <i>Grounds</i> |
|---|---|
| The sites, other than sea bed sites, from which any minerals and aggregates required for carrying out the development are to be obtained. | That the arrangements ought to be modified— <ul style="list-style-type: none">(a) to control the depletion of mineral resources in the authority's area;(b) to prevent or reduce prejudicial effects on the free flow of traffic in their area; or |

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| <i>Matters</i> | <i>Grounds</i> |
|--|---|
| <p>The means and routes by which any minerals, aggregates, bulk materials other than minerals or aggregates and tunnel lining segments so required are to be transported to construction and storage sites within the limits of land to be acquired.</p> | <p>(c) to preserve the amenity of their area or in the interests of nature conservation; and are reasonably capable of being so modified.</p> |
| <p>The handling during removal, storage and re-use of any topsoil removed in the course of carrying out the development.</p> | <p>That the arrangements ought to be modified— (a) to prevent or reduce prejudicial effects on the free flow of traffic in their area; or (b) to preserve the amenity of their area or in the interests of nature conservation; and are reasonably capable of being so modified.</p> |
| <p>The sites, within the limits of land to be acquired, at which any minerals and aggregates required for carrying out the development are to be stored until used.</p> | <p>That the arrangements ought to be modified to ensure that the topsoil remains in good condition and are reasonably capable of being so modified.</p> |
| <p>The sites, within those limits, at which any topsoil removed in the course of carrying out the development is to be stored until re-used.</p> | <p>That the arrangements ought to be modified to preserve the amenity of the neighbourhood or in the interests of nature conservation or of the preservation of a site of archaeological or historic interest and are reasonably capable of being so modified. (Note: This ground applies in relation to the matters mentioned in all succeeding entries in the left-hand column of this table.)</p> |
| <p>The hours during which, and the days on which, work is to be carried out within those limits for the purpose of carrying out the development.</p> | |
| <p>The suppression of noise and dust caused by any operations carried on within those limits for the purpose of carrying out the development.</p> | |
| <p>The measures to be taken within those limits to prevent mud being carried on to any highway as a result of carrying out the development.</p> | |
| <p>The use within those limits of artificial lighting for the purpose of carrying out the development.</p> | |
| <p>The sites, within those limits, which are to be used for camps for the accommodation of persons engaged in carrying out the development.</p> | |

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In this paragraph "the appropriate planning authority" means, in relation to the first two matters mentioned in the left-hand column of the table, the county planning authority, and otherwise the district planning authority.

Detailed plans and specifications for certain authorised development

3 To the extent that any authorised development consists of any operation or work mentioned in the left-hand column of the following table it shall be carried out in accordance with detailed plans and specifications approved, at the request of the Concessionaires, by the appropriate planning authority.

The only ground on which the authority may refuse, or impose conditions on the grant of, any approval of plans or specifications of any operation or work so mentioned is that specified in relation to that operation or work in the right-hand column of the table.

THE TABLE

| <i>Operation or work</i> | <i>Grounds</i> |
|--|---|
| The erection, construction, alteration or extension of any building, road vehicle park or noise screening. | That— (a) the design or external appearance of the building, road vehicle park, noise screening, terracing or other earthworks ought to be modified to preserve the amenity of the neighbourhood and is reasonably capable of being so modified; or (b) the development ought to and could reasonably be carried out elsewhere within the limits of land on which the works of which it forms part may be carried out under this Act. |
| Terracing or other earthworks. | |

Note:

1. The operations and works specified in the entries in the left-hand column of the table preceding the last such entry do not include anything to which that last entry applies or the deposit of spoil on the landward side of the sea wall.
2. The grounds in paragraph (b) of the first and second entries in the right-hand column of the table do not apply in the case of any development which forms part of a scheduled work or of railway sidings constructed in connection with such a work.

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| <i>Operation or work</i> | <i>Grounds</i> |
|--|--|
| The erection, construction or installation of lighting equipment. | That— (a) the design of the equipment, with respect to the emission of light, ought to be modified to preserve the amenity of the neighbourhood and is reasonably capable of being so modified; or (b) the development ought to and could reasonably be carried out elsewhere within the limits of land on which the works of which it forms part may be carried out under this Act. |
| The formation, laying out or alteration of any means of access to any highway used, or proposed highway proposed to be used, by vehicular traffic. | That the development would be prejudicial to road safety or the free flow of traffic and is reasonably capable of modification so as to avoid such prejudice. |
| The construction of Work No. 7, referred to below in this Schedule as the sea wall. | That its elevation, situation or external appearance ought to be modified to preserve the amenity of the neighbourhood or the marine environment or in the interests of nature conservation and is reasonably capable of being so modified having regard to all the circumstances (including any relevant requirements |

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| | |
|--------------------------|---|
| <i>Operation or work</i> | <i>Grounds</i> for the protection of navigation). |
|--------------------------|---|

Note:

1. The operations and works specified in the entries in the left-hand column of the table preceding the last such entry do not include anything to which that last entry applies or the deposit of spoil on the landward side of the sea wall.
2. The grounds in paragraph (b) of the first and second entries in the right-hand column of the table do not apply in the case of any development which forms part of a scheduled work or of railway sidings constructed in connection with such a work.

In this paragraph—

- (a) "the appropriate planning authority" means, in relation to the construction of the sea wall, the county planning authority, and otherwise the district planning authority; and
- (b) the reference to relevant requirements for the protection of navigation is a reference to—
 - (i) the requirements of paragraph 2 of Part III and paragraphs 4 and 5 of Part IV of Schedule 7 to this Act with respect to the approval of such part of the sea wall as is on the surface of lands below the level of mean high water springs; and
 - (ii) any conditions or restrictions imposed in relation to any such part of the sea wall under any of those provisions.

Spoil

- 4 (1) No surplus spoil shall be deposited except on the landward side of the sea wall.
- (2) No more than the maximum permitted amount of spoil shall be deposited there (whether or not as surplus spoil).
- (3) The maximum permitted amount of spoil is the amount deriving from the excavation of 3.75 million cubic metres of unexcavated material.
- (4) The functions of a local planning authority of issuing enforcement notices under "Section 87 of the Act of 1971 or serving stop notices under section 90 of that Act shall be exercisable by the county planning authority so far as they relate to a breach of planning control consisting of failure to comply with the requirement imposed by sub-paragraph (2) above.
- (5) The county planning authority may by notice in writing require the Concessionaires to give in writing within twenty-one days after the date on which the notice is served, or such longer time as may be specified in the notice or as the authority may allow, such information as may be so specified as to—
 - (a) the amount of spoil which has been deposited on the landward side of the sea wall; and
 - (b) the rate at which spoil is to be deposited there in the future;and any information as to an amount of spoil shall be given by reference to the volume of the material from which it derives in its unexcavated state.
- (6) Subsections (2) and (3) (offences) of section 284 of the Act of 1971 shall have effect in relation to notices under sub-paragraph (5) above as they have effect in relation to notices under subsection (1) of that section.

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- 5 (1) The methods to be employed in, and the timing of, the deposit of spoil on the landward side of the sea wall shall be in accordance with arrangements approved, at the request of the Concessionaires, by the county planning authority.
- (2) The height of the spoil deposited on the landward side of the sea wall shall not exceed the maximum specified in those arrangements.
- (3) Finishing treatment shall be applied to the surface of the spoil deposited there in accordance with those arrangements.
- (4) The county planning authority shall not refuse, or impose conditions on the grant of, any approval required for the purposes of this paragraph unless they are satisfied that it is expedient to do so on the ground that the arrangements ought to be modified to preserve the amenity of the neighbourhood or the marine environment or in the interests of nature conservation and are reasonably capable of being so modified.
- 6 Once the tunnel system has been brought into operation, the Concessionaires shall, in accordance with a scheme agreed with the county planning authority or, in default of agreement or on notice being given by the Secretary of State to the authority and the Concessionaires, settled by him, put so much of the area on the landward side of the sea wall as consists of land reclaimed by the deposit of spoil and is not required for or in connection with the "operation of the tunnel system into such a condition as the scheme may provide.

Protection of site at Holywell Coombe

- 7 (1) No part of Work No. 3 shall be constructed in any part of the protected site.
- (2) Nothing shall be done in any part of the protected site in connection with the construction of that work except necessary drainage work and landscaping of the site.
- (3) No part of that work shall be constructed, and nothing shall be done in connection with the construction of that work, anywhere else unless—
- (a) the southern boundary of the protected site is fenced; or
 - (b) that boundary has been fenced but the fencing has been temporarily removed because it was necessary to remove it in order to carry out necessary drainage work or landscaping of the site.
- (4) In this paragraph "the protected site" means the area of land at Holywell Coombe in the district of Shepway (town of Folkestone) bounded on the southern side by a straight line between National Grid reference points 622058E 138078N and 622138E 138095N, on the western and eastern sides by straight lines passing due north from each of those points to the limit of deviation of Work No. 3 and on the northern side by that limit.

Arrangements and schemes for certain authorised development

- 8 (1) Where the bringing into use of any building, facility or work comprised in any authorised development will result in the emission of significant levels of noise, the building, facility or work shall not be brought into use unless measures for the suppression of that noise have been taken in accordance with arrangements approved, at the request of the Concessionaires, by the district planning authority.
- (2) The district planning authority shall not refuse any approval required for the purposes of sub-paragraph (1) above unless they are satisfied that it is expedient to do so on

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the ground that the arrangements ought to be modified to preserve the amenity of the neighbourhood and are reasonably capable of being so modified.

- 9 (1) The land associated with any building, facility or work comprised in any authorised development shall be landscaped in accordance with a scheme approved, at the request of the Concessionaires, by the district planning authority.
- (2) No building, facility or work so comprised shall be brought into use unless—
- (a) a scheme for the landscaping of the land associated with it has been so approved; and
 - (b) any landscaping operations required by the scheme to have been completed before the building, facility or work is brought into use have been completed in accordance with the scheme.
- (3) The district planning authority shall not refuse any approval required for the purposes of this paragraph unless they are satisfied that it is expedient to do so on the ground that the scheme ought to be modified to enhance the amenity of the neighbourhood or in the interests of nature conservation or of the preservation of a site of archaeological or historic interest and. is reasonably capable of being so modified.

Consultation regarding County Council development

- 10 None of the development to which the planning permission deemed by section 9(3) of this Act to have been granted under Part III of the Act of 1971 relates shall be begun until the County Council have consulted the district planning authority with regard to the design of the development and the landscaping and noise screening to be undertaken in connection with the development.

Certificates for construction or use of certain authorised development

- 11 (1) Subject to sub-paragraph (2) below, the construction of the terminal area at Cheriton, Folkestone shall cease at the end of the period of six months beginning with the day it began unless the Secretary of State has, before the end of that period, certified either—
- (a) that, in his opinion, adequate facilities for and in connection with public viewing of the construction have been provided; or
 - (b) that, in his opinion, the Concessionaires have taken all reasonable steps to provide such facilities;
- and it shall not be begun again unless the Secretary of State has certified as mentioned either in paragraph (a) above or in paragraph (b) above.
- (2) If it is intended to provide facilities for or in connection with public viewing of the construction of the terminal area within that area, sub-paragraph (1) above shall not apply in relation to the construction of the terminal area so far as it consists of work in connection with the provision of the facilities.
- 12 The inland clearance depot to be constructed at Ashford, in Kent, shall not be brought into use until the Secretary of State has—
- (a) certified either—
 - (i) that, in his opinion, adequate refreshment and sleeping facilities for the use of drivers of vehicles using the depot have been provided within the limits of land to be acquired for the purposes of or in connection with the depot; or

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- (ii) that, in his opinion, the Concessionaires have taken all reasonable steps to provide such facilities; and
 - (b) certified, under paragraph 20(3) of Schedule 2 to this Act, completion of the construction of Work No. 17.
- 13 The tunnel system shall not be brought into use until the Secretary of State has certified either—
- (a) that, in his opinion, adequate facilities for and in connection with public viewing of the operation of the terminal area at Cheriton, Folkestone have been provided; or
 - (b) that, in his opinion, the Concessionaires have taken all reasonable steps to provide such facilities.
- 14 (1) The Secretary of State shall consult the county and district planning authorities before giving any certificate for the purposes of paragraph 11, 12(a) or 13 above.
- (2) Where the Secretary of State gives any such certificate as is mentioned in sub-paragraph (1) above he shall give a copy of the certificate to each of the authorities whom he was required by that sub-paragraph to consult before giving it.
- (3) No failure on the part of the Secretary of State to comply with his obligations under sub-paragraph (1) or (2) above shall affect the validity of any certificate given by him for the purposes of paragraph 11, 12(a) or 13 above.

Working sites: discontinuance of operations and putting into condition

- 15 (1) Where any authorised development consists of or includes the carrying out on any working site within the limits of land to be acquired of operations ancillary to the construction of the tunnel system—
- (a) those operations shall be discontinued before the end of the relevant period; and
 - (b) the Concessionaires shall, in accordance with a scheme agreed with the district planning authority or, in default of agreement or on notice being given by the Secretary of State to the authority and the Concessionaires, settled by him, put the site, except any part which is required either for use for or in connection with the operation of the tunnel system or for any of the Railways Board's works, into such a condition as the scheme may provide.
- (2) The relevant period is the period of ten years beginning with the date of the passing of this Act or such longer period as the Secretary of State may specify, after consultation with the district planning authority, at any time before the end of the period of ten years or of any period previously specified by him.
- 16 Where any development to which any planning permission granted by virtue of section 9(4) of this Act relates consists of or includes the carrying out on any working site within the limits of land to be acquired of operations ancillary to any of the Railways Board's works—
- (a) those operations shall be discontinued before the end of the period of ten years beginning with the date of the passing of this Act; and
 - (b) the Railways Board shall, in accordance with a scheme agreed, in the case of a working site in a London borough, with the borough planning authority and, in the case of a working site anywhere else, by the district planning authority or, in default of agreement or on notice being given by the Secretary of State to the authority and the Railways Board, settled by

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him, put the site, except any part which is required for any of the Railways Board's works, into such a condition as the scheme may provide.

Nature, the countryside and archaeological and historic sites

- 17 (1) Where a request is made—
- (a) for an approval under paragraph 2, 3, 5 or 9 above;
 - (b) for an approval of detailed plans and specifications which is required for the exercise of any planning permission granted by virtue of section 9(4) of this Act;
- the planning authority shall, within five days of receiving it, commence any appropriate consultation with respect to it.
- (2) The authority shall not take any decision in relation to the request until either they have received any representations which the body or bodies consulted wish to make or the period of 21 days from the commencement of consultation has ended.
- (3) Before a planning authority agree a scheme under paragraph 6, 15 or 16 above they shall undertake any appropriate consultation with respect to it.
- (4) In this paragraph "appropriate consultation" means—
- (a) where the authority consider that nature conservation may be affected, consultation with the Nature Conservancy Council;
 - (b) where they consider that the conservation of the natural beauty and amenity of the countryside (including nature conservation) may be affected, consultation with the Countryside Commission;
 - (c) where they consider that a site of archaeological or historic interest may be affected, consultation with the Historic Buildings and Monuments Commission for England.

Approvals: supplementary

- 18 A planning authority shall not be required to entertain any request for an approval required for the purposes of any provision of this Schedule unless the Concessionaires have deposited with them both—
- (a) a plan showing the Concessionaires' current proposals regarding the layout of the authorised development; and
 - (b) a schedule setting out the Concessionaires' current proposals regarding the timetable for carrying it out.
- 19 (1) The Secretary of State may give directions to a planning authority requiring any request by the Concessionaires for an approval required for the purposes of any provision of this Schedule to be referred to him instead of being dealt with by them.
- (2) A direction under this paragraph may relate either to a particular request or to requests of a class specified in the direction.
- (3) A request in respect of which such a direction has effect shall be referred to the Secretary of State accordingly.
- (4) The Secretary of State may refuse or impose conditions on an approval only on the grounds open to the authority required to refer the request for it.
- (5) The determination by the Secretary of State of the request shall be final.

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- 20 The Secretary of State may give directions to a planning authority restricting the grant, either indefinitely or during such period as may be specified in the directions, of a particular approval required for the purposes of any provision of this Schedule or of approvals so required of a class specified in the directions.
- 21 (1) Where the Concessionaires are aggrieved by the decision of a planning authority on any request for an approval required for the purposes of any provision of this Schedule, they may by notice under this sub-paragraph appeal to the Secretary of State whose decision on the appeal shall be final.
- (2) Any notice under sub-paragraph (1) above shall be in writing and be served, within 28 days of notification of the decision to which it relates, on the Secretary of State and the authority whose decision is appealed against.
- (3) On an appeal under this paragraph, the Secretary of State may allow or dismiss the appeal or vary the decision of the authority whose decision is appealed against but may make a determination involving the refusal of, or imposition of conditions on, an approval only on the grounds open to that authority.
- (4) Where the authority to whom a request for approval is made fail to notify the Concessionaires of their decision on that request within—
- (a) the period of two months beginning with the date on which that request was made; or
 - (b) such extended period as may from time to time be agreed upon in writing between the authority and the Concessionaires;
- the provisions of this paragraph shall apply in relation to the request as if the authority had refused it and as if they had notified the Concessionaires of their decision on the last day of the two month period or, where an extended period has been agreed, on the last day of that extended period.
- (5) No appeal under section 36 of the Act of 1971 may be made against any decision in relation to which a right of appeal arises under this paragraph.