

SCHEDULES

SCHEDULE 2

Article 4

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

“county planning authority” means Suffolk County Council in its role as county planning authority for the county of Suffolk under section 1(1)(a) of the 1990 Act⁽¹⁾;

“drainage strategy” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the drainage strategy for the purposes of this Order and which sets out the principles for the design and mitigation measures associated with the drainage of the authorised development;

“ground investigation report” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the ground investigation report for the purposes of this Order;

“highway lighting plan” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the highway lighting plan for the purposes of this Order and which set out the proposed highway lighting to be implemented as part of the authorised development;

“interim code of construction practice” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the code of construction practice for the purposes of this Order and which sets a framework to control impacts arising from construction of the authorised development;

“landscaping plans” means the plans of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the landscaping plans for the purposes of this Order and which set out the principles for the proposed landscaping to be implemented as part of the authorised development;

“new bridge operating signals risk assessment” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the new bridge operating signals risk assessment for the purposes of this Order;

“piling works risk assessment” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the piling works risk assessment for the purposes of this Order;

“scheme-wide written scheme of investigation” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the

(1) 1990 c. 8.

scheme-wide written scheme of investigation for the purposes of this Order and which sets out the framework to control the impacts of the authorised development on heritage assets; and “transport assessment” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as transport assessment for the purposes of this Order and which sets out an assessment of the impact of the Scheme on the surrounding highway network.

Time limit for commencement of the authorised development

2. The authorised development must commence within 5 years of the date on which this Order comes into force.

Design of the authorised development

3.—(1) The authorised development must be designed and implemented in general accordance with the general arrangement plans.

(2) Prior to the commencement of the authorised development the undertaker must submit to the county planning authority a final version of the design guidance manual for approval.

(3) The county planning authority must consult the local planning authority before approving the final version of the design guidance manual under sub-paragraph (2).

(4) The final version of the design guidance manual submitted under sub-paragraph (2) must be in accordance with the interim design guidance manual.

(5) The authorised development must be designed and implemented in accordance with the final version of the design guidance manual approved under sub-paragraph (2).

(6) No part of the authorised development which comprises the construction or improvement of a highway may commence until written details of those works have been submitted to and approved by the county planning authority.

(7) For the purposes of paragraph (6) “written details” means—

- (a) highway cross-sections and long sections;
- (b) details of earthworks, pavement construction, materials, carriageway layout, footways and cycleways, road restraints, road markings, traffic signs, traffic signals, crossing facilities, and street lighting;
- (c) details of approach ramps, engineered fill, retaining structures, piles and foundations where those details have not already been submitted by the undertaker to the county planning authority as part of a scheme bridge approval in principle report pursuant to Volume 1 Section 1 Part BD2/12 (Technical Approval of Highways Structures) of Highways England’s Design Manual for Roads and Bridges; and
- (d) any other details requested by the county planning authority prior to or within 14 days of receiving a submission by the undertaker under paragraph (6).

Code of construction practice

4.—(1) No part of the authorised development may commence until a code of construction practice for that part of the authorised development has been submitted to the county planning authority by the undertaker following consultation with the Environment Agency, the harbour authority and the local planning authority and the submitted code of construction practice has been approved by the county planning authority.

(2) Any code of construction practice produced under sub-paragraph (1) must be in accordance with the interim code of construction practice.

(3) The authorised development must be carried out in accordance with the code of construction practice produced under sub-paragraph (1).

Landscaping scheme

5.—(1) No part of the authorised development may commence until a written landscaping scheme for the authorised development has been submitted to the county planning authority by the undertaker following consultation with the local planning authority and the written landscaping scheme has been approved in writing by the county planning authority.

(2) Any landscaping scheme prepared under sub-paragraph (1) must be in general accordance with the landscaping plans and set out details of all proposed 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) ecological areas;
- (f) details of any existing trees to be retained;
- (g) details of the maintenance regime for the landscaping scheme; and
- (h) implementation timetables for all landscaping works.

(3) All landscaping works must be carried out and maintained to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

Surface water drainage

6.—(1) No part of the authorised development which comprises any part of a surface water drainage system may commence until written details of that surface water drainage system have been submitted to the county planning authority by the undertaker following consultation with the local planning authority, the harbour authority and the surface water drainage system has been approved in writing by the county planning authority.

(2) The surface water drainage system submitted for approval by the county planning authority under sub-paragraph (1) must be in accordance with the drainage strategy.

(3) The surface water drainage system must be constructed in accordance with the approved details referred to in sub-paragraph (1).

Highways lighting

7.—(1) No part of the authorised development may commence until a written scheme of the proposed highway lighting to be provided for that part of the authorised development has been submitted to the county planning authority by the undertaker following consultation with the local planning authority and the harbour authority and the written scheme of the proposed highway lighting for that part of the authorised development has been approved in writing by the county planning authority.

(2) The written scheme of proposed highway lighting submitted for approval by the county planning authority under sub-paragraph (1) must be in accordance with the highway lighting plan.

(3) The authorised development must be carried out in accordance with the scheme approved under sub-paragraph (1).

(4) Nothing in this requirement restricts lighting of the authorised development during its construction or where temporarily required for maintenance.

Contaminated land and groundwater

- 8.—(1) The undertaker must carry out further ground investigation surveys—
- (a) as near as reasonably practicable to boreholes BHC06 and BHC101 referred to in the ground investigation report, prior to the commencement of the construction of Work No. 1E; and
 - (b) of land within the limits of deviation of Work No. 5, prior to the commencement of the construction of Work No. 5.
- (2) In the event that contaminated land, including groundwater—
- (a) which was not previously identified in the environmental statement is found at any time when carrying out the authorised development; or
 - (b) is encountered following the further ground investigation of boreholes BHC06 and BHC101 referred to in the ground investigation report carried out under sub-paragraph (1)(a); or
 - (c) is encountered whilst following the further ground investigation within the limits of deviation of Work No. 5 carried out under sub-paragraph (1)(b),

it must be reported as soon as reasonably practicable to the county planning authority, the local planning authority, the Environment Agency, and, in the event of any contaminated land, including groundwater, being found within Lowestoft Harbour, the harbour authority.

(3) As soon as reasonably practicable (and in any event not later than 30 days) following the submission of a report pursuant to sub-paragraph (1), the undertaker must submit for approval a scheme to the county planning authority setting out how the nature and extent of contamination on site will be assessed by way of an investigation and risk assessment.

(4) The undertaker must implement the approved scheme and upon completion of it submit for approval to the county planning authority a written report of the findings of the scheme.

(5) If the county planning authority determines, following receipt of the report submitted by the undertaker pursuant to sub-paragraph (4), that remediation of the contaminated land 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 submitted for approval by the county planning authority.

(6) Remediation must be carried out in accordance with the scheme approved under sub-paragraph (5).

(7) Following completion of the remediation carried out pursuant to sub-paragraph (5), a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to the county planning authority for approval.

(8) In this paragraph, where approval or determination is sought by the undertaker from the county planning authority, before giving any approval or determination the county planning authority must consult with the local planning authority, the Environment Agency and, where the approval or determination relates to matters within Lowestoft Harbour, the harbour authority.

Mooring

9. The new bridge must not be opened for traffic until Work No. 7 has been made available for use by recreational vessels.

Written schemes of investigation

10. The authorised development must be carried out in accordance with the scheme-wide written scheme of investigation.

Navigation risk assessment

11.—(1) Prior to commencement of construction of the new bridge and following consultation with the harbour authority, the undertaker must undertake a vessel simulation which takes account of the final design of the new bridge.

(2) Prior to commencement of construction of the new bridge and following consultation with the harbour authority and the PMSC Stakeholder Group, the undertaker must update the preliminary navigation risk assessment to take account of the final design and construction methodology of the new bridge and, in doing so, must use the results of the vessel simulation carried out under sub-paragraph (1).

(3) Following the update of the preliminary navigation risk assessment carried out pursuant to sub-paragraph (2), the undertaker must submit the updated navigation risk assessment to the harbour authority for its approval, which must not be unreasonably withheld.

(4) Following construction of the new bridge the harbour authority must incorporate the updated navigation risk assessment approved by it under sub-paragraph (3) into the wider navigational risk assessments relating to Lowestoft Harbour.

(5) The construction and operation of the new bridge must be carried out in accordance with the updated navigation risk assessment approved under sub-paragraph (3) and, subject to sub-paragraph (6), in accordance with any further updated navigation risk assessment prepared by the harbour authority in consequence of sub-paragraph (4).

(6) The obligation under sub-paragraph (5) to operate the new bridge in accordance with any further updated navigation risk assessment prepared by the harbour authority in consequence of sub-paragraph (4) is subject to the terms of a determination under article 62 of any dispute between the undertaker and the harbour authority that may arise relating to that further updated navigation risk assessment.

(7) Article 62 applies to any dispute arising under this paragraph between the undertaker and the harbour authority in place of the provisions of Part 2 of this Schedule.

Traffic mitigation

12.—(1) The authorised development must not be opened for traffic until the undertaker has carried out and completed the following works—

- (a) the installation of equipment to adapt traffic signals at the junction of the existing A12 Tom Crisp Way and the existing Blackheath Road;
- (b) the widening of the existing Peto Way approach to the existing A1117 Normanston Drive/Peto Way roundabout; and
- (c) the widening of the left turn kerb radius at the existing Kimberley Road for traffic turning left into that road from the existing B1531 Waveney Drive, at the existing Kimberley Road/B1531 Waveney Drive junction.

(2) The works required by sub-paragraph (1) must not commence until written details of the works have been submitted to and approved by the county planning authority, following consultation with the local planning authority.

(3) The undertaker must not utilise the power under article 53 and Schedule 11 to make provision for the prohibition of motorised vehicles on the existing Durban Road except for emergency vehicles and the motorised vehicles of owners, occupiers and visitors to No 1b Durban Road, as shown on

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sheet 1 of the traffic regulation measures plans (clearways and prohibitions), until it has exercised the powers under article 53 and Schedule 11 to make provision for no waiting at any time and no loading or unloading at any time as shown on sheet 3 of the traffic regulation measures plans (clearways and prohibitions).

(4) The undertaker must, in 2027 and 2037, undertake a review of the performance of the junctions described as junctions 6, 18 and 22 in the transport assessment.

(5) Following completion of each of the reviews required by sub-paragraph (4), the undertaker must submit for approval a report of that review to the county planning authority.

(6) Upon receipt of that report, the county planning authority must, within 8 weeks of receiving a report under sub-paragraph (5) determine—

(a) if any remedial measures are required at any of the junctions listed in sub-paragraph (4) having regard to the expected performance of these junctions in 2037 set out in the transport assessment; and

(b) whether such remedial measures must be carried out by the undertaker.

(7) If the county planning authority determines that the undertaker must implement those remedial measures, the undertaker must implement them.

Piling works risk assessment

13.—(1) No piling work to be carried out as part of the authorised development may be undertaken until the undertaker has submitted an update to the piling works risk assessment for approval to the Environment Agency.

(2) Any piling work to be carried out as part of the authorised development must be undertaken in accordance with the recommendations of the updated piling works risk assessment approved under sub-paragraph (1).

New bridge operating signals

14. The operating signals of the new bridge must be operated in accordance with the new bridge operating signals assessment or any update to that assessment as may be submitted to and approved by the county planning authority.

Amendment to approved details

15. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved under this Part of this Schedule, the approved details are taken to include any amendments that may subsequently be approved in writing by the body responsible for approving the details for that requirement, following consultation by the undertaker with the Environment Agency, the harbour authority or the local planning authority (where required to do so by the requirement) and the undertaker demonstrating to the body responsible that the amended details would not give rise to any materially new or materially different environmental effects than those assessed in the environmental statement.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

16. In this Part of this Schedule, “discharging authority” means—

- (a) any body responsible for giving any consent, agreement or approval required by a requirement included in Part 1 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement; or
- (b) the local planning authority in the exercise of its functions set out in sections 60 and 61 of the Control of Pollution Act 1974⁽²⁾.

Applications made under requirements

17.—(1) Where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) contained in Part 1 of this Schedule, or a document referred to by a requirement, the discharging authority must give notice to the undertaker of the discharging authority's decision on the application with a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the discharging authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 18; or
- (c) such longer period as may be agreed between the parties.

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

(3) In determining any application made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the discharging authority may—

- (a) give or refuse its consent, agreement or approval; or
- (b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to conditions the discharging authority must provide its reasons for that decision with the notice of the decision.

Further information regarding requirements

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

(2) If the discharging authority considers that further information is necessary and the requirement concerned contained in Part 1 of this Schedule does not specify that consultation with a consultee is required, the discharging authority must, within 10 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement concerned contained in Part 1 of this Schedule specifies that consultation with a consultee is required, the discharging authority must issue the application to the consultee within five business days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within five business days of receipt of such a request.

(4) If the discharging authority does not give the notification within the period specified in sub-paragraph (2) or (3) it (and the consultee, as the case may be) is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the undertaker.

(2) 1974 c. 40.

Appeals

19.—(1) Where the undertaker makes an application to the discharging authority, the undertaker may appeal to the Secretary of State in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required by—
 - (i) a document referred to in Part 1 of this Schedule; or
 - (ii) a document referred to in any requirement contained in Part 1 of this Schedule;
 - (b) the discharging authority grants an application subject to conditions;
 - (c) the discharging authority issues a notice further to sections 60 or 61 of the Control of Pollution Act 1974;
 - (d) on receipt of a request for further information pursuant to paragraph 18 of this Part of this Schedule, the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
 - (e) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.
- (2) The appeal process is as follows—
- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 17(1), giving rise to the appeal referred to in sub-paragraph (1);
 - (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the discharging authority and any consultee specified under the relevant requirement contained in Part 1 of this Schedule;
 - (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the adjudicator”) and must notify the appeal parties of the identity of the adjudicator and the address to which all correspondence for the attention of the adjudicator must be sent;
 - (d) the discharging authority and any consultee (if applicable) must submit their written representations together with any other representations to the adjudicator in respect of the appeal within 10 business days of the start date specified by the adjudicator and must ensure that copies of their written representations and any other representations as sent to the adjudicator are sent to each other and to the undertaker on the day on which they are submitted to the adjudicator;
 - (e) the appeal parties must make any counter-submissions to the adjudicator within 10 business days of receipt of written representations pursuant to sub-paragraph (c) above; and
 - (f) the adjudicator must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the 10 day period for counter-submissions under paragraph (e).
- (3) The appointment of the adjudicator pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the adjudicator considers that further information is necessary to enable the adjudicator to consider the appeal the adjudicator must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the adjudicator and to the other appeal parties by the date specified by the adjudicator. The adjudicator must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the adjudicator within 10 business days of the date specified by the adjudicator but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).

(6) On an appeal under this paragraph, the adjudicator may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the adjudicator in the first instance.

(7) The adjudicator may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the adjudicator such written representations as have been sent outside of the relevant time limits.

(8) The adjudicator may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the adjudicator that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the adjudicator on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for a judicial review.

(10) If an approval is given by the adjudicator pursuant to this Part of this Schedule, it is deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the adjudicator in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the adjudicator's determination.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the adjudicator to be paid by the discharging authority, the reasonable costs of the adjudicator are to be met by the undertaker.

(12) On application by the discharging authority or the undertaker, the adjudicator may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the adjudicator must have regard to relevant guidance on the Planning Practice Guidance website or any official circular or guidance which may replace it.

Publication of requirements

20.—(1) The undertaker, must, as soon as reasonably 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 discharging authority.

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

Anticipatory steps towards compliance with any requirement

21. 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

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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.