

SCHEDULES

SCHEDULE 2

Article 4

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1.—(1) In this Schedule—

“British Standards” means standards, recommendations and procedures as drawn up and published by the British Standards Institution;

“contaminated land” has the same meaning as that given in section 78A(1) (preliminary) of the Environmental Protection Act 1990;

“detailed archaeological mitigation strategy” means the detailed archaeological mitigation strategy listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the detailed archaeological mitigation strategy for the purposes of this Order, which sets out the requirements for the overarching written scheme of investigation, heritage management plan, site specific written schemes of investigation and archaeological method statements and protections for the World Heritage Site and its setting with which the undertaker must comply according to the terms of the detailed archaeological mitigation strategy in carrying out, operating and maintaining the authorised development, as set out in paragraph 5;

“European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(2);

“HEMP” means a handover environmental management plan;

“main works” means those parts of the authorised development that are not comprised in the preliminary works;

“main works CEMP” means a construction environmental management plan to be submitted and approved under requirement 4(8) in relation to the main works;

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981(3);

“National Trust” means the National Trust for Places of Historic Interest or Natural Beauty;

“OEMP” means the outline environmental management plan referred to in Schedule 12 certified by the Secretary of State as the outline environmental management plan for the purposes of this Order, which sets out (i) at section 1.2.2 the scheme objectives and (ii)

(1) Section 78A was inserted by section 57 of the Environment Act 1995 (c. 25) and amended by section 86(2) of the Water Act 2003 (c. 37).

(2) S.I. 2017/1012.

(3) 1981 c. 69.

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protections for the World Heritage Site and its setting with which the undertaker must comply according to the terms of the OEMP in carrying out operating and maintaining the authorised development, as set out in paragraph 4;

“preliminary highways works” means—

- (a) Work No. 1H(viii) to (xiv) inclusive;
- (b) Work No. 5; and
- (c) Work No. 7;

“preliminary works CEMP” means a construction environmental management plan to be submitted and approved under requirement 4(4) in relation to the preliminary works;

“preliminary works OEMP” means Table 3.2a and any other parts of the OEMP relating to the preliminary works; and

“scheme objectives” means the four scheme objectives drawn by the Secretary of State for the design, carrying out and maintenance of the authorised development being—

- (a) the transport objective, to create a high quality reliable route between the south east and the south west that meets the future needs of traffic;
- (b) the economic growth objective, to enable growth in jobs and housing by providing a free flowing and reliable connection between the south east and the south west;
- (c) the cultural heritage objective, to help conserve and enhance the World Heritage Site and to make it easier to reach and explore; and
- (d) the environment and community objective, to improve biodiversity and provide a positive legacy for nearby communities.

(2) Where any requirement in this Schedule—

- (a) refers to a scheme, drawing, document or plan, that scheme, document or plan is to be taken to be the version certified by the Secretary of State under article 55 (certification of plans etc.) of this Order or to any subsequent version of that scheme, drawing document or plan approved by the Secretary of State under a requirement; or
- (b) provides that the authorised development is to be carried out in accordance with details, or a scheme, plan or other document approved by the Secretary of State, the approved details, scheme, plan or other document must be taken to include any amendments or revisions subsequently approved by the Secretary of State.

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.

Preparation of detailed design, etc.

3.—(1) The authorised development must be designed in detail and carried out so that it is, subject to the limits of deviation, in accordance with the works plans, the engineering section drawings (plan and profiles) and the engineering section drawings (cross sections) unless otherwise agreed in writing by the Secretary of State, following consultation with the planning authority on matters related to its functions and any other person the Secretary of State considers appropriate having regard to the proposed amendment in question and the statutory roles and responsibilities of such person, and provided that the Secretary of State is satisfied that any amendments to the works plans, the engineering section drawings (plan and profiles) and the engineering section drawings (cross sections) 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, engineering section drawings (plan and profiles) or engineering section drawings (cross sections) and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Outline Environmental Management Plan

4.—(1) The main works must be carried out in accordance with the OEMP.

(2) The preliminary works must be carried out in accordance with the preliminary works OEMP.

(3) The preliminary highways works must be carried out in accordance with sections 4.2 (design vision) and 4.3 (design principles) of the OEMP.

(4) Subject to sub-paragraphs (5) and (10), no part of the preliminary works is to begin until a preliminary works CEMP for that part has been submitted to and approved in writing by the Secretary of State, following the consultation specified in the preliminary works OEMP.

(5) No part of the preliminary works in respect of which a heritage management plan, site specific written scheme of investigation or archaeological method statement is required under the preliminary works OEMP is to begin until each of those documents required for that part has been submitted and approved in writing by the planning authority, following the consultation specified in the preliminary works OEMP and the detailed archaeological mitigation strategy.

(6) A preliminary works CEMP must be prepared so that it is substantially in accordance with the preliminary works OEMP.

(7) Each part of the preliminary works must be carried out in accordance with the preliminary works CEMP for that part.

(8) Subject to sub-paragraphs (9) and (10), no part of the main works is to commence until a main works CEMP for that part has been prepared and submitted to and approved in writing by the Secretary of State, following the consultation specified in the OEMP.

(9) Subject to sub-paragraph (11), no part of the main works in respect of which a heritage management plan, site specific written scheme of investigation or archaeological method statement is required under the OEMP is to commence until each of those documents required for that part has been submitted and approved in writing by the planning authority, following the consultation specified in the OEMP and the detailed archaeological mitigation strategy.

(10) The approval of the Secretary of State under sub-paragraph (4) or (8) is not required in respect of any heritage management plan, site specific written scheme of investigation or archaeological method statement forming part of any preliminary works CEMP or main works CEMP.

(11) A main works CEMP must be prepared so that it is substantially in accordance with the OEMP and must include as many of the following plans, policies, strategies or schemes as are applicable to the part of the main works to which it relates—

- (a) site waste management plan;
- (b) heritage management plan;
- (c) site specific written schemes of investigation;
- (d) any archaeological method statement required under the OEMP;
- (e) emergency preparedness and response plan (to include a pollution incident control plan);
- (f) ground movement monitoring strategy;
- (g) landscape and ecology management plan;
- (h) arboricultural mitigation strategy;
- (i) noise and vibration management plan;

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- (j) noise insulation and temporary rehousing policy;
- (k) soils management strategy;
- (l) water management plan (to include a flood risk management plan);
- (m) groundwater management plan;
- (n) invasive non-native species management plan (if required);
- (o) material management plan; and
- (p) traffic management plan (to include a construction workforce travel plan, a site access plan, construction traffic routeing details and a site travel plan).

(12) The Groundwater Management Plan referred to in sub-paragraph (11)(m) above must include details of how any potential adverse hydrological effects on the archaeological site, known as Blick Mead, shall be considered in accordance with the requirements to be addressed by that Plan as set out in the OEMP, and must make specific provision for—

- (a) monitoring of groundwater levels at Blick Mead;
- (b) monitoring of soil moisture levels at Blick Mead;
- (c) trigger levels for both groundwater levels and soil moisture content that take into account the aforementioned monitoring data and below which the archaeological resource at Blick Mead would be liable to be endangered; and
- (d) a remediation plan to provide for the re-watering of the site should groundwater levels or soil moisture levels fall below the trigger levels set.

(13) The main works CEMPs, when taken together, must be prepared so that they are substantially in accordance with all of the requirements of the OEMP and must include all of the plans, policies, strategies and schemes listed in sub-paragraph (11) and must not contain any conflicting provision.

(14) Nothing in sub-paragraphs (11) or (12) affects the requirement in paragraph 5 that the authorised development must be carried out, operated and maintained in accordance with the detailed archaeological mitigation strategy.

(15) Each part of the main works must be carried out in accordance with the main works CEMP approved for that part.

(16) Upon completion of construction of the authorised development the CEMPs must be converted into one or more HEMPs and the authorised development must be operated and maintained in accordance with the relevant HEMP.

(17) The undertaker must make each preliminary works CEMP, main works CEMP and HEMP available in an electronic form suitable for inspection by members of the public.

Archaeology

5.—(1) The authorised development must be carried out, operated and maintained in accordance with the detailed archaeological mitigation strategy.

(2) Appeals in respect of those matters listed in the detailed archaeological mitigation strategy as grounds for appeal (including a decision of the planning authority on the application for approval under paragraph 4 of a heritage management plan, site specific written scheme of investigation or archaeological method statement) must be made to the Secretary of State and the Secretary of State must determine such appeals in accordance with the procedure set out in that strategy.

(3) Part 2 of this Schedule does not apply in respect of appeals in respect of the detailed archaeological mitigation strategy.

Protected species

6.—(1) No part of the authorised development is to commence until final pre-construction survey work for that part has been carried out, reflecting that contained in the environmental statement, to establish whether European or nationally protected species are present on any of the land affected, or likely to be affected, by any part of the authorised development or in any of the trees and shrubs to be lopped or felled as part of the authorised development.

(2) Where a protected species is shown to be present, or where there is a reasonable likelihood of it being present, the relevant parts of the relevant works must not begin until a scheme of protection and mitigation measures (including their design and management) has been submitted to and approved in writing by the Secretary of State after consultation with Natural England. Except to the extent otherwise approved, the scheme of protection and mitigation measures including their design and management must be in accordance with the guidance in section 4 of volume 10 of the Design Manual for Roads and Bridges.

(3) The relevant works must be carried out in accordance with the approved scheme or with any amended scheme that may subsequently be approved in writing by the Secretary of State, after consultation with Natural England, and in accordance with any necessary licence.

Contaminated land and groundwater

7.—(1) In the event that contaminated land is found at any time when constructing the authorised development which was not previously identified in the environmental statement, it must be reported as soon as reasonably practicable to the planning authority and the Environment Agency and the undertaker must complete a risk assessment of the contamination in consultation with the planning authority and the Environment Agency.

(2) The undertaker must provide to the planning authority and the Environment Agency a copy of any risk assessment referred to in sub-paragraph (1) as soon as reasonably practicable after its completion.

(3) Where the undertaker determines that remediation of the contaminated land is necessary, as soon as reasonably practicable after making that determination a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose, must be submitted to and approved in writing by the Secretary of State, following consultation with the planning authority and the Environment Agency.

(4) Remediation must be carried out in accordance with the approved scheme and programme.

Implementation and maintenance of landscaping

8.—(1) Except for Work No. 5, no part of the authorised development is to commence within the World Heritage Site or as part of Work No. 4 until a landscaping scheme applicable to all of the authorised development which is situated within the World Heritage Site (except for Work No.5) and Work No.4 has been submitted to and approved in writing by the Secretary of State, following consultation with the planning authority, Historic England and (on matters related to its functions) the National Trust.

(2) No part of the authorised development which—

- (a) is situated outside of the World Heritage Site and does not form part of Work No.4; or
- (b) comprises Work No. 5,

is to commence until a landscaping scheme applicable to that part has been submitted to and approved in writing by the Secretary of State, following consultation with the planning authority and (on matters related to its functions) Historic England and, in respect of Work No. 5 only (on matters related to its functions), the National Trust.

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(3) Each landscaping scheme must be based on the mitigation measures included in the environmental statement and set out details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed aquatic or terrestrial planting;
- (b) landscaping works associated with any fences and walls (as appropriate);
- (c) cultivation, importing of materials and other operations to ensure plant establishment;
- (d) proposed finished ground levels;
- (e) hard surfacing materials;
- (f) details of existing trees to be retained, with measures for their protection during the construction period;
- (g) implementation timetable for the landscaping works;
- (h) measures for the replacement, in the first available planting season, of any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after the completion of the part of the authorised development to which the relevant landscaping scheme relates, dies, becomes seriously diseased or is seriously damaged in the construction of the authorised development; and
- (i) retained historic landscape features and proposals for restoration, where relevant.

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

Traffic management

9.—(1) No part of the authorised development is to commence until a traffic management plan which makes provision for traffic management proposals required to facilitate the construction of that part and which is substantially in accordance with the OEMP has been submitted to and approved in writing by the Secretary of State, following consultation with the local highway authority and the Royal Mail Group Limited.

(2) The relevant part of the authorised development must be constructed in accordance with the approved plan referred to in sub-paragraph (1).

Drainage

10.—(1) No part of the authorised development is to commence until written details of the drainage system to be constructed for that part, based on the mitigation measures included in the environmental statement and including a timetable for implementation and means of pollution control and for the management of flood risk, have been submitted to and approved in writing by the Secretary of State, following consultation with the planning authority on matters related to its functions, and the Environment Agency.

(2) The drainage system must be constructed in accordance with the approved details referred to in sub-paragraph (1) prior to that part of the authorised development becoming open for public use.

Details of consultation

11.—(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 enclosing the written responses received and

setting out the consultation undertaken by the undertaker pursuant to that requirement to inform the details submitted and the undertaker's response to that consultation.

(2) Promptly after submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.

(3) If any consultation responses are not reflected in the details submitted to the Secretary of State for approval under this Schedule, the summary report must state the undertaker's reasons for not including them.

Stone curlew breeding plots

12.—(1) No part of the preliminary works shall begin until—

- (a) written details have been submitted to the Secretary of State—
 - (i) demonstrating that the undertaker has secured land to ensure the provision of the replacement stone curlew breeding plot in accordance with the stone curlew breeding plot specification;
 - (ii) including in relation to that plot, a regime of management measures substantially in accordance with those contained in the stone curlew breeding plot specification; and
- (b) the Secretary of State, following consultation with Natural England, has approved the matters listed in sub-paragraph (a).

(2) The undertaker must—

- (a) provide the replacement stone curlew breeding plot prior to the beginning of any works to remove the existing stone curlew breeding plot; and
- (b) maintain the replacement stone curlew breeding plot,

in accordance with the details approved by the Secretary of State under sub-paragraph (1)(b).

(3) No part of the authorised development may be commenced until—

- (a) written details have been submitted to the Secretary of State—
 - (i) demonstrating that the undertaker has secured land to enable the provision of the additional stone curlew breeding plots in accordance with the stone curlew breeding plot specification; and
 - (ii) including in relation to those plots, a regime of management measures substantially in accordance with those contained in the stone curlew breeding plot specification and a timetable for their implementation; and
- (b) the Secretary of State, following consultation with Natural England, has approved the matters listed in sub-paragraph (a).

(4) The undertaker must provide and maintain the additional stone curlew breeding plots in accordance with the timetable and details approved by the Secretary of State under sub-paragraph (3)(b).

(5) In this paragraph—

“stone curlew breeding plot specification” means the stone curlew breeding plot specification listed in Schedule 12 (documents to be certified) certified by the Secretary of State as the stone curlew breeding plot specification for the purposes of this Order, and “replacement stone curlew breeding plot”, “existing stone curlew breeding plot” and “additional stone curlew breeding plots” have the same meaning as in the stone curlew breeding plot specification.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

13.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including consent, 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 paragraph 15; 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 that considers it likely that the subject matter of the application is 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.

Determination of applications by the planning authority

14. Where an application has been made to the planning authority under paragraph 4 for approval of a heritage management plan, a site specific written scheme of investigation or an archaeological method statement, the planning authority must determine the application in accordance with the procedure set out in the detailed archaeological mitigation strategy.

Further information

15.—(1) In relation to any part of an application made under this Schedule, the Secretary of State may, having regard to the scheme objectives and all other relevant matters, 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 that 21 business 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 paragraph 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 paragraph 13 (applications made under requirements) and in this paragraph.

(4) In this paragraph, “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⁽⁴⁾.

Register of requirements

16.—(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 or the planning authority.

(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 or the planning authority 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 three years following completion of the authorised development.

Anticipatory steps towards compliance with any requirement

17. If before the coming into force of this Order the undertaker or any other person has taken 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.

(4) 1971 c. 80.