

SCHEDULES

SCHEDULE 2

Article 5

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

“CEMP” means the construction environmental management plan;

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

“core hours” means the period of working hours of 7:30 to 18:00 on any day from Monday to Friday except Good Friday, Christmas Day or a bank holidays and 8:00 to 13:00 on Saturdays and in this definition a “bank holiday” means a holiday as defined in section 1 (bank holidays) of the Banking and Financial Dealings Act 1971⁽²⁾;

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

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

“HEMP” means the handover environmental management plan, being the CEMP 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 as set out in the outline environmental management plan 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;

“preliminary works” means the works set out in table 1.1 of the outline environmental management plan and for the purposes of these requirements the preliminary works are a part and where any requirement allows discharge for a part, discharge may be sought for the preliminary works only;

(1) 1990 c. 43. 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) 1971 c. 80.

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“protected species” means species which are subject to protection under the laws of England or which are European protected species and in this definition “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(3).

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.

Construction Environmental Management Plan

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

(2) The CEMP must—

- (a) be substantially in accordance with the outline environmental management plan;
- (b) contain a record of all the sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) incorporate the measures referred to in the environmental statement as being incorporated in the CEMP;
- (d) require adherence to the core hours, except for—
 - (i) night time closures for Markeaton footbridge demolition and installation of a new footbridge;
 - (ii) junction and slip road tie-in works to existing highways;
 - (iii) installation of bridge decks;
 - (iv) installation of sign gantries;
 - (v) installation of temporary and permanent line markings;
 - (vi) overnight traffic management measures, as agreed with the local highway authority;
 - (vii) works associated with traffic management and signal changes; and
 - (viii) any emergency works.

Provided that written notification of the extent, timing and duration of each activity is given to relevant local authorities in advance of any works that are to be undertaken outside of core hours, except for any emergency works, which are to be notified to the relevant local authorities as soon as is practicable.

Any other work carried out outside the core hours or any extension to the core hours will only be permitted if there has been prior written agreement of the relevant environmental health officer provided that the activity does not result in materially new or materially different environmental effects as reported in the environmental statement.

(3) The authorised development must be constructed in accordance with the approved CEMP.

(4) Prior to completion of construction the undertaker will prepare a HEMP in consultation with the relevant planning authority, the local highway authority and the Environment Agency and submit it to the Secretary of State for written approval.

(3) [S.I. 2017/1012](#).

(5) Upon completion of construction of the authorised development the CEMP must be converted into the HEMP as approved under sub-paragraph (4) and the HEMP must—

- (a) be substantially in accordance with the relevant HEMP provisions included in the outline environmental management plan and the CEMP;
- (b) contain a record of all the sensitive environmental features that have the potential to be affected by the operation and maintenance of the proposed development; and
- (c) incorporate the measures referred to in the environmental statement as being incorporated in the HEMP.

(6) The authorised development must be operated and maintained in accordance with the HEMP approved under sub-paragraph (5).

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 consultation with another party referred to under sub-paragraph (1) is to be for a minimum period of 28 days unless otherwise agreed in writing by the relevant consultee.

(4) 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.

(5) 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 other than the preliminary works 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 and the local highway authority.

(2) No part of the authorised development, 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 outline environmental management plan 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;

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- (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.

(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 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 in writing 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 which was not previously identified in the environmental statement, including impacted groundwater, is found at any time when carrying out the authorised development, 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 scheme for the investigation and mitigation of areas of archaeological interest, reflecting the mitigation measures included in chapter 6 of the environmental statement, with provision for sub-written schemes of investigation for each area and each phase (evaluation or detailed excavation or watching brief), has been prepared in consultation with the relevant planning authority, agreed with the County Archaeologist and submitted to and approved in writing by the Secretary of State.

(2) The authorised development must be carried out in accordance with the archaeological framework strategy and sub-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 archaeological framework strategy and sub-written schemes of investigation referred to in sub-paragraph (1) must be agreed with the County Archaeologist and implemented within a timescale agreed with the County Archaeologist and 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 archaeological framework strategy 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) On completion of the authorised development, suitable resources and provisions for long term storage of the archaeological archive will 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 in consultation with Natural England 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.

Traffic management

11.—(1) No part of the authorised development other than the preliminary works is to commence until a traffic management plan for the construction of the authorised development substantially in accordance with the traffic management plan (application document reference 7.4) has been submitted to and approved in writing by the Secretary of State following consultation with the local highway authority.

(2) The authorised development must be constructed in accordance with the approved traffic management plan.

Detailed design

12.—(1) The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the works plans and the engineering section drawings, 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 and the engineering section drawings 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 or engineering section drawings and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Surface and foul water drainage

13.—(1) No part of the authorised development other than the preliminary works is to commence until written details of the surface and foul water drainage system, reflecting the mitigation measures in the CEMP and in chapter 13 of the environmental statement, 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 and the local highway authority.

(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 and the local highway authority.

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

Flood compensation and storage

14.—(1) No part of the authorised development at Little Eaton is to commence until a detailed floodplain compensation scheme for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the Environment Agency.

(2) No part of the authorised development at Kingsway is to commence until a detailed flood storage scheme for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

(3) The scheme prepared under sub-paragraph (1) must provide suitable floodplain compensation for any flood waters that would be displaced by the authorised development in the 1 in 100 year event including 50% allowance for climate change.

(4) The scheme prepared under sub-paragraph (2) must provide suitable flood storage for any flood waters that would be displaced by the authorised development in the 1 in 100 year event including a 40% allowance for climate change.

(5) The schemes must be fully implemented as approved and subsequently maintained.

Noise Mitigation

15.—(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 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 either reflect the mitigation measures included in the environmental statement and the noise barriers must be provided in the locations shown on the environmental mitigation plan(s) or, where the mitigation proposed materially differs from the mitigation identified in the environmental statement, the undertaker must provide evidence with the written details submitted 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.

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

Highway lighting

16.—(1) No part of the authorised development is to commence until a written scheme of the proposed highway lighting to be provided for that part of the authorised development has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and (in the case of proposed lighting for any highway for which the undertaker is not, or will not be following implementation of article 16, the highway authority) the local highway authority.

(2) The standard of the highway lighting to be provided by the scheme referred to in sub-paragraph (1) must either reflect the standard of the highway lighting included in the environmental statement or, where the standard of the highway lighting proposed materially differs from the standard of the highway lighting identified in the environmental statement, the undertaker must provide evidence with the written scheme submitted for approval that the standard of the highway lighting proposed would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement. The standard of the highway lighting must encompass the specification, level of provision, light spillage, intensity and brightness of the highway lighting.

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

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

Approvals and amendments to approved details

17. 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

18.—(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 paragraph 19; 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 paragraph 4 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

19.—(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 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 18 (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

20.—(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

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 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.