

SCHEDULE 2

Article 3

PART 1 REQUIREMENTS

Interpretation

1. In this Schedule—

"CEMP" means the construction environmental management plan to be submitted and approved under requirement 8;

"EMP" means the environmental management plan to be submitted and approved under requirement 7;

"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;^(a) and

"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 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.

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.

Detailed design

3. Except where the authorised development is carried out in accordance with the plans listed in requirement 4, no part of the authorised development is to commence until details of the layout, scale, siting, design, dimensions and external appearance of Works Nos. 7a, 8c, 9b, 10c, 11c, 12e, 13c, 14c, 17, 19c, 20c, 22c, 24g, 24i and 25, earthworks and retaining structures comprised in the authorised development so far as they do not accord with the development shown in the plans listed in requirement 6 have been submitted to and approved by the Secretary of State, following consultation with the relevant planning authority and any relevant statutory authority. The authorised development must be carried out in accordance with the details shown in the plans listed in requirement 6 or approved under this requirement.

^(a) Definition substituted by Conservation of Habitats and Species Regulations 2017/1012 Sch.6(2) para.72 (November 30, 2017).

Gantry design

4. The gantries to be constructed described as Gantry Type 5 in Schedule 1 (authorised development) are to be designed in accordance with drawing 514451-MUH-ST-ZZ-DR-GN-301415 or drawing 514451-MUH-ST-ZZ-DR-GN-301416 of the engineering drawings and sections, in accordance with details to be submitted to and approved by the Secretary of State following consultation with the relevant planning authority.

Carriageway surfacing

5. (1) Where any carriageway comprised in Work No. 1a and 1b, or any slip road, is to be resurfaced as part of the authorised development, TSCS is to be provided unless otherwise approved by the Secretary of State. Any material approved by the Secretary of State as low noise surfacing must have similar noise reduction properties as TSCS.

(2) Any subsequent resurfacing of any carriageway or slip road referred to in sub paragraph (1) must be carried out using low noise surfacing material with similar (or improved) noise reduction properties to the TSCS unless otherwise approved by the Secretary of State following consultation with the relevant planning authority.

Engineering drawings, sections and other information

6. (1) The authorised development must be carried out in accordance with the approved plans submitted with the application (unless otherwise approved by the Secretary of State, following consultation with the relevant planning authority and provided that the altered development accords with the principles of the engineering and design report (Document Reference No. 7.3, dated April 2022) and falls within the Order limits) as listed in Schedule 12 (engineering drawings, sections and other information).

(2) Where any alternative details are approved under this requirement or requirements 3 (detailed design) or 20 (amendments to approved details), those details are deemed to be substituted for the corresponding details in the approved plans as listed in Schedule 12.

Environmental Management Plan

7. (1) No part of the authorised development is to commence until an EMP, substantially in accordance with the outline EMP (Application Document Reference No. 6.3, Appendix 4.2), has been submitted to and approved by the Secretary of State, following consultation with the relevant planning authority and the Environment Agency.

(2) All construction work must be carried out in accordance with the approved EMP unless otherwise approved by the Secretary of State, following consultation with the relevant planning authority and the Environment Agency.

Construction Environmental Management Plan

8. (1) No part of the authorised development is to commence until a CEMP, substantially in accordance with the outline CEMP (Application Document Reference No. 6.3, Appendix 4.2A), annexed to the outline EMP (Application Document Reference No. 6.3, Appendix 4.2) has been submitted to and approved by the Secretary of State, following consultation with the Environment Agency and the relevant planning authority.

(2) The construction of the authorised development must be carried out in accordance with the CEMP.

(3) Upon completion of construction of the authorised development the CEMP must be converted into the HEMP.

(4) The authorised development must be operated and maintained in accordance with the HEMP.

Implementation and maintenance of landscaping

9. (1) No part of the authorised development is to commence until a landscaping scheme and programme has been submitted to and approved by the Secretary of State following consultation with the relevant planning authority.

(2) The landscaping scheme must reflect the mitigation measures included in the environmental masterplan (as listed in Schedule 12 (engineering drawings, sections and other information)) and set out details of all proposed hard and soft landscaping works, including—

- (a) location, number, species (which must be native species), size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) details of existing trees to be retained, with measures for their protection during the construction period; and
- (d) a programme, which may relate to any part of the authorised development, or the whole, for the implementation of the landscaping scheme.

(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) The authorised development must be landscaped in accordance with the scheme and programme approved under sub-paragraph (1).

(4) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, dies or becomes, in the opinion of the Secretary of State, seriously diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the Secretary of State gives consent to any variation.

Fencing

10. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with Highways England's Manual of Contract Documents for Highway Works, Volume 1 – Specification for Highway Works (consolidated edition, November 2005, amended as at May 2014 or as subsequently amended), except where any departures from that manual are agreed by the Secretary of State, following consultation with the relevant planning authority.

Ecological mitigation

11. Ecological mitigation of the authorised development with respect to protected species, including the provision of any mammal underpasses or tunnels, set out in the environmental masterplan (as listed in Schedule 12 (engineering drawings, sections and other information)) and the CEMP, must be provided in accordance with the principles of guidance in Highways England's Design Manual for Roads and Bridges, Volume 10, Section 4 (Volume 10, October 1994,

amended as at May 2014 or as subsequently amended), as supported by additional guidance from the Institute of Ecology and Environmental Management, published ecological literature, and consultation with statutory and non-statutory nature conservation bodies, except where any departures from that guidance are agreed by the Secretary of State, following consultation with Natural England and the relevant planning authority.

Contaminated land and groundwater

12.(1) No part of the authorised development is to commence until a geotechnical design report has been produced based on and including the results of ground investigation, which are to inform (where and to the extent necessary) a written scheme to deal with contaminated groundwater due to landfill (if any is identified within the report) and which has been submitted to and approved by the Secretary of State following consultation with the Environment Agency, the relevant water undertaker and the relevant planning authority.

(2) Any scheme to deal with contaminated groundwater produced in accordance with sub-paragraph (1) must be implemented as part of the authorised development.

(3) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement, the undertaker must cease construction of the authorised development in the vicinity of that contaminated land and must report it immediately to the Environment Agency, the relevant water undertaker, the relevant planning authority and the Secretary of State, and the undertaker must complete a risk assessment of the contamination.

(4) Where the Secretary of State 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 submitted to and approved by the Secretary of State, following consultation with the Environment Agency, the relevant water undertaker and the relevant planning authority.

(5) No remedial work constituting a material operation (as defined in section 155 (when development begins) of the 2008 Act) in respect of contamination of any land, including groundwater, within the Order limits is to be carried out until the scheme for remediation has been approved under sub-paragraph (4).

(6) Remediation must be carried out in accordance with the scheme approved under sub-paragraph (4).

(7) In this requirement 'relevant water undertaker' means the water undertaker within the meaning of the Water Industry Act 1991^(a) for the land in question.

Protected species

13.(1) No part of the authorised development is to commence until final pre-construction survey work for that part has been undertaken to establish whether European or nationally protected species are present on any of the land affected, or likely to be affected, by that 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, or where there is a reasonable likelihood of it being, present, the relevant part of the authorised development must not begin until a scheme of protection and mitigation measures or translocation of the relevant species has been submitted to and approved by the Secretary of State, following consultation with Natural England.

^(a) (a) 1991 c. 56.

(3) The relevant part of the authorised development must be carried out in accordance with the approved scheme, or with any amended scheme that may be subsequently approved by the Secretary of State, following consultation with Natural England, and under any necessary protected species licence.

(4) Monitoring of impacts on protected species and habitats prior to, during and after construction, together with the monitoring and management of mitigation measures, must be carried out as far as required to meet the protected species licence requirements.

(5) In the event that any protected species are found at any time when carrying out the authorised development which were not previously identified in the environmental statement—

- (a) the finding must be reported immediately to Natural England; and
- (b) no activities requiring a protected species licence are to continue until a scheme of protection and mitigation measures for the protected species has been submitted to, and approved by, Natural England and the Secretary of State.

Surface water drainage

14.(1) No part of the authorised development is to commence until a surface and foul water drainage scheme has been submitted to and approved by the Secretary of State, following consultation with the relevant lead local flood authority and South East Water Limited. The surface and foul water drainage scheme must—

- (a) include a survey of the existing drainage system in the Order land to identify areas affected by the works where repair or replacement of existing drainage infrastructure is required; and
- (b) reflect the mitigation measures in the drainage strategy report (Application Document Reference No. 7.5) and include means of pollution control.

(2) The surface and foul water drainage system must be constructed in accordance with the approved surface and foul water drainage scheme.

Archaeological remains

15.(1) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be investigated and recorded and reported to the Secretary of State, Historic England and the relevant planning authority by means of a technical report identifying the location for the housing of any finds.

(2) No construction operations are to take place within 10 metres of such remains for a period of 14 days from the date of such notification unless otherwise agreed by the Secretary of State, following consultation with Historic England and the relevant planning authority.

(3) If the Secretary of State is of the view that the archaeological remains require further investigation, no construction operations are to take place within 10 metres of the remains until provision has been made for the further investigation and recording of the remains in accordance with details first submitted to, and approved by, the Secretary of State, following consultation with Historic England and the relevant planning authority.

Written scheme of investigation

16.(1) No part of construction compound 5 is to be constructed or used until a programme of archaeological work including a written scheme of investigation has been submitted to and approved by the relevant planning authority. The written scheme of investigation must include—

- (a) a programme and methodology of site investigation and recording;
- (b) a programme for post investigation assessment;
- (c) provision for analysis of the site investigation recording;
- (d) provision for publication and dissemination of the analysis and records of the site investigation;
- (e) provision to be made for archive deposition of the analysis and records of the site investigation; and
- (f) nomination of a competent person or organisation to undertake the work set out within the written scheme of investigation.

(2) Construction compound 5 is not to be constructed or used other than in accordance with the written scheme of investigation approved under sub-paragraph (1).

(3) The site investigation and post investigation assessment is to be completed in accordance with the programme set out in the written scheme of investigation approved under sub-paragraph (1).

Buildings at risk

17.No part of the authorised development is to be carried out in the vicinity of any buildings assessed to be at risk in the environmental statement or in the opinion of the relevant planning authority without first notifying the relevant planning authority.

Construction traffic management

18.(1) No part of the authorised development is to commence until a construction traffic management plan, detailing traffic management measures during construction of the authorised development and substantially in accordance with the outline construction traffic management plan annexed to the outline CEMP (Application Document Reference No. 6.3, Appendix 4.2A, Annex E), has been submitted to and approved by the Secretary of State, following consultation with the relevant planning authority.

(2) The authorised development must be constructed in accordance with the approved details.

Permanent lighting

19.(1) No permanent lighting forming part of the authorised development is to be installed until a written lighting scheme has been submitted to and approved by the Secretary of State, following consultation with the relevant planning authority.

(2) The authorised development must be constructed in accordance with the approved scheme.

(3) Lighting installed as part of the authorised development must not be more than 1 metre higher than the existing lighting columns.

Amendments to approved details

20. With respect to any requirement which requires the authorised development to be carried out in accordance with any details or scheme approved under this Schedule, the approved details or scheme are to be taken to include any amendments that may subsequently be approved.

Control of noise during construction of the scheme

21.(1) No part of the authorised development is to commence until a written scheme for noise management during construction of the authorised development has been submitted to and approved by the Secretary of State, following consultation with the relevant planning authority.

(2) The scheme is to set out the particulars of—

- (a) the reasonable noise management measures to be taken in relation to noise resulting from the construction of the scheduled works; and
- (b) measures for monitoring noise levels during construction of the scheduled works to ensure compliance with the scheme and the effectiveness of the management measures.

(3) The scheduled works must be undertaken in accordance with the approved noise management scheme.

Acoustic barriers

22.(1) No part of the authorised development is to commence until details of a scheme to install or replace acoustic barriers in the locations shown on the environmental masterplan (as listed in Schedule 12 (engineering drawings, sections and other information)) contained within the environmental statement has been submitted to and approved by the Secretary of State, following consultation with the relevant planning authority.

(2) The acoustic barriers installed in accordance with the scheme approved in sub-paragraph (1) must—

- (a) match adjacent retained acoustic barriers so far as possible; and
- (b) be compliant with any engineering requirements governing the form of acoustic barriers which may be installed.

(3) Where the barriers as shown on the environmental masterplan are found not to be fit for purpose as acoustic barriers of equivalent standard to the requirements for acoustic barriers set out in the Specification for Highway Works CI.2504, or as amended, whether by reason of—

- (a) their state of repair; or
- (b) their original design,

the scheme referred to in sub-paragraph (1) is to provide for their removal and replacement with acoustic barriers consistent with the requirements for acoustic barriers set out in the Specification for Highway Works CI.2504, or as amended.

(4) The scheme approved under sub-paragraph (1) must be implemented before operation of the authorised development commences and maintained in accordance with the details of the approved scheme, unless the Secretary of State agrees, following consultation with the relevant planning authority, that any acoustic barrier comprised in the approved scheme no longer needs to be maintained.

Flood risk

23.(1) No scheduled works within Flood Zone 3 as shown on annex H to the flood risk assessment are to commence until a detailed scheme of compensation works for the effects of the authorised development upon flood risk in Flood Zone 3 ("flood compensation scheme") has been submitted to and approved by the Secretary of State, following consultation with the Environment Agency and the relevant planning authority.

(2) The flood compensation scheme must ensure that compensation works—

- (a) are carried out in accordance with the outline flood compensation scheme shown on drawing TR010019-2.3-v-20 sheets 1 to 13; or
- (b) where alternate mitigation works or measures not detailed in the flood risk assessment are proposed, demonstrate that the works or measures are at least as effective as those set out in paragraph (a).

(3) The flood compensation scheme must ensure that compensation works provide sufficient compensation to ensure that the authorised development will not increase flood risk for all events up to and including the 1% annual exceedance probability plus a 20 per cent allowance for climate change.

(4) The flood compensation scheme must provide for phasing of the provision of flood risk compensation in accordance with any phasing of the construction of the authorised development.

(5) The authorised development and the flood compensation scheme must be implemented in accordance with the details approved under sub-paragraph (1).

(6) No part of the Order land situated in Flood Zone 3 plus a 20 per cent allowance for climate change is to be used for storage, except as shown on annex H to the flood risk assessment.

Biodiversity management strategy

24.(1) No part of the authorised development is to commence until a written strategy of biodiversity management measures has been submitted to and approved by the Secretary of State following consultation with the Environment Agency, Natural England and the relevant planning authority.

(2) The biodiversity management strategy is to include—

- (a) provision of otter ledges within culverts affected by the authorised development;
- (b) provision of otter fencing at those locations shown on the environmental masterplan (as listed in Schedule 12 (engineering drawings, sections and other information));
- (c) provision of bat boxes at appropriate locations within the Order limits together with arrangements for their monitoring and maintenance by local bat groups or others;
- (d) the removal or management of invasive non-native species within the Order limits; and

- (e) maximising the biodiversity potential of any soft landscaping to be provided as part of the authorised development through detailed design.

(3) The approved strategy and any measures under it must be implemented during construction and operation of any part of the authorised development.

Road restraint standard

25. Any verge mounted road restraints to be provided as part of the authorised development must be constructed and installed in accordance with Highways England's Requirement for Road Restraint Systems, TD 19/06 (Design Manual for Roads and Bridges, August 2006, or as amended) except where any departures from that standard are agreed by the Professional Technical Solutions directorate of Highways England.

Air quality monitoring and management

26.(1) No part of the authorised development is to commence until the undertaker has prepared a monitoring scheme for Nitrogen Dioxide ("NO₂"). The monitoring scheme must—

- (a) be prepared in consultation with the relevant local authorities ("the air quality authorities") for those Air Quality Management Areas in which the authorised development is located where both a change in air quality in excess of 0.4µg/m³ is predicted in the environmental statement, and where annual mean concentrations are above the national air quality objective value;
- (b) set out the location and specification for operation and data provision for any monitors to be installed in line with guidance on air quality monitoring issued by the Department for Environment, Food and Rural Affairs from time to time (but the duplication of existing monitoring is not required where its data is available); and
- (c) provide for the monitors to—
 - (i) be installed during the construction period of the authorised development;
 - (ii) be operated from the opening of the authorised development for public use; and
 - (iii) remain in place for a period of 3 years or until the monitoring shows a continuous period of 12 months in which there is no exceedance of the annual national air quality objective for the NO₂ monitored, whichever is the longer ("the monitoring period").

(2) During the monitoring period, the undertaker must make all data obtained from the monitors available to the air quality authorities.

(3) The monitoring data must be accompanied by a review undertaken by a firm of air quality experts appointed by the undertaker in consultation with the air quality authorities and submitted at 12-monthly intervals during the monitoring period. If any such review demonstrates in the opinion of the appointed firm of experts that the authorised development has materially worsened air quality where there are exceedances of national air quality objectives, the undertaker must—

- (a) consult with the air quality authorities on a scheme of mitigation (including a programme for its implementation) within 6 months of the data review, taking into consideration any local air quality action plans adopted by each air quality authority as part of its local air quality management duties;

- (b) submit the scheme of mitigation to the Secretary of State for approval within 1 month of concluding its consultation with the air quality authorities; and
- (c) implement the scheme of mitigation in accordance with the programme contained in the scheme of mitigation following approval by the Secretary of State.

(2) Before considering whether to approve the scheme of mitigation, the Secretary of State must consult the air quality authorities and take into consideration any local air quality action plans adopted by an air quality authority as part of its local air quality management duties.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirement

27.(1) 27.—(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 the Order, the Secretary of State must give notice to the undertaker of its 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 2; or
- (c) (such longer period as may be agreed between the parties.
- (d) 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.

(2) 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; and
- (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 statement that the subject matter of the application is likely to give rise to any materially new or materially worse 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.

(2) With respect to any requirement that requires details to be submitted to the Secretary of State for approval under this Schedule, the details must be accompanied by a statement as to whether the subject matter of the application is likely to give rise to any new or materially worse environmental effects in comparison with those reported in the environmental statement.

Further information

28.(1) In relation to any part of an application made under this Schedule, the Secretary of State may 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 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 27 and in this paragraph.

Register of requirements

29.(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.

Details of consultation

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

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

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

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