

Gravesham Borough Council

A122 (Lower Thames Crossing) Development Consent Order

Deadline 5

October 2023

Appendix II: Schedule 2 to the draft DCO with amendments in track changes to show the discharging authority being the local planning authorities and local highway authorities

Version 2

Note 1: The differences between this version 2 and the version of Schedule 2 submitted by the Council at Deadline 4 are:

- The addition of a new paragraph 23 (fees);
- In Part 2 of Schedule 2, the use of the term “discharging authority” with a definition of that term added into a new interpretation paragraph 25 (which was formerly sub-paragraph 24(16)).

Note 1: The submission of this list is without prejudice to the Council’s in principle opposition to the DCO.

Note 2: The Council has made suggestions for other changes to Schedule 2 which are unrelated to the issue of who should be the discharging authority. They are contained in [\[REP4-302\]](#).

Note 3: The amendments shown are to the clean version of v.6.0 of the DCO [\[REP4-094\]](#)

Note 4: The appeals provisions in paragraph 23 are based on [paragraph 22](#) of Schedule 2 to the Great Yarmouth Third River Crossing Development Consent Order 2020 and the fees provisions are based on [paragraph 3 of Schedule 2](#) to the Northampton Gateway Rail Freight Interchange Order 2019.

Note 5: The Council has not discussed these amendment with other local authorities, In accordance with the ExA’s request for drafting to be provided at Deadline 4, GBC considered it would be helpful to provide it now.

SCHEDULE 2
REQUIREMENTS
PART 1
REQUIREMENTS

Interpretation

1.—(1) In this Schedule—

“advanced compound areas” means the areas shown as advanced compound areas in plate 3.1 of the Code of Construction Practice;

“CEP (First Iteration)” means the carbon and energy management plan referred to in Schedule 16 (documents to be certified) certified by the Secretary of State and which is the first iteration of the carbon and energy management plan;

“CEP (Second Iteration)” means the second iteration of the carbon and energy management plan to be submitted and approved under paragraph 16(1) of this Schedule;

“CEP (Third Iteration)” means the third iteration of the carbon and energy plan which is a handover carbon and energy management plan.

“Code of Construction Practice” means the document of that description in Schedule 16 (documents to be certified) certified as the code of construction practice by the Secretary of State and which is the first iteration of an environmental management plan;

“commence” means beginning to carry out any material operation (as defined in section 56(4) (time when development begun) of the 1990 Act) forming part of the authorised development other than preliminary works and “commencement” is to be construed accordingly, “contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990 **(a)**;

“the design principles document” means the document of that description referenced in Schedule 16 (documents to be certified) certified by the Secretary of State;

“EMP (Second Iteration)” means the second iteration of an environmental management plan to be submitted and approved under paragraph 4(2) of this Schedule;

“EMP (Third Iteration)” means the third iteration of an environmental management plan which is a handover environmental management plan;

“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 **(b)**;

“excluded utilities works” means Works Nos. G1a to G10, Work No. TFGP1, Works Nos. MU1 to MU92 and Works Nos. MUT1 to MUT32;

“framework construction travel plan” means the document of that description referenced in Schedule 16 (documents to be certified) and certified by the Secretary of State;

(a) 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.

(b) S.I. 2017/1012.

“general arrangement drawings” means the general arrangement document referenced in Schedule 16 (documents to be certified) certified by the Secretary of State;

“LEMP” means a landscape and ecological management plan submitted and approved under paragraph 5(1) of this Schedule;

“the Manual of Contract Documents for Highway Works” means the document of that name published electronically by or on behalf of the strategic highway authority for England or any equivalent replacement published for that document;

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

“outline traffic management plan for construction” means the document of that description referenced in Schedule 16 (documents to be certified) and certified by the Secretary of State;

“outline materials handling plan” means the outline materials handling plan appended to the Code of Construction Practice;

“outline site waste management plan” means the outline site waste management plan appended to the Code of Construction Practice;

“preliminary works” means operations consisting of archaeological investigations and pre-construction ecological mitigation (including in connection with those investigations or mitigation vegetation clearance), environmental surveys and monitoring, investigations for the purpose of assessing and monitoring ground conditions and levels, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment for advanced compound areas, diversion and laying of underground apparatus (except any excluded utilities works) for advanced compound areas, accesses for advanced compound areas (and vegetation clearance in connection with those accesses), and the temporary display of site notices or information;

“preliminary works EMP” means Annex C of the Code of Construction Practice and includes the preliminary works REAC;

“preliminary works REAC” means those measures in the REAC applying to the preliminary works as shown in Table 2.1 of Annex C of the Code of Construction Practice;

“REAC” means the register of environmental actions and commitments contained in the Code of Construction Practice; and

“wider network impacts management and monitoring plan” means the document of that description referenced in Schedule 16 (documents to be certified) and certified by the Secretary of State.

(2) References in this Schedule to part of the authorised development are to be construed as references to stages, phases or elements of the authorised development in respect of which an application is made by the undertaker under this Schedule, and references to commencement of part of the authorised development in this Schedule are to be construed accordingly.

(3) References to details or schemes approved under this Schedule are to be construed as references to details or schemes approved in relation to a specified part of the authorised development, as the case may be.

Time limits

2. The authorised development must begin no later than the expiration of 5 years beginning with the date that this Order comes into force.

(a) 1981 c. 69.

Detailed design

3.—(1) The authorised development must be designed in detail and carried out in accordance with the design principles document and the preliminary scheme design shown on the engineering drawings and sections, and the general arrangement drawings, unless otherwise agreed in writing by the relevant local highway authority, in respect of the authorised development comprising highways, or by the relevant local planning authority in respect of any other part of the authorised development, provided that the relevant local highway authority or the relevant local planning authority is satisfied that any amendments to those documents showing departures from the preliminary scheme 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 relevant local highway authority or relevant planning authority under sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Construction and handover environmental management plans

4.—(1) The preliminary works must be carried out in accordance with preliminary works EMP.

(2) No part of the authorised development is to commence until a EMP (Second Iteration), substantially in accordance with the Code of Construction Practice, for that part has been submitted to and approved in writing by the responsible planning authority, following consultation by the undertaker with any other relevant planning authorities, the relevant local highway authorities and the bodies identified in Table 2.1 of the Code of Construction Practice to the extent that it relates to matters relevant to their respective functions.

(3) The EMP (Second Iteration) must be written in accordance with ISO14001, reflect the mitigation measures set out in the REAC and must include measures or plans for the management

(4) of—

- (a) site waste (substantially in accordance with the outline site waste management plan);
- (b) handling of materials (substantially in accordance with the outline materials handling plan);
- (c) noise and vibration;
- (d) air quality;
- (e) ecology;
- (f) soils;
- (g) contaminated land;
- (h) substances hazardous to health; and
- (i) pollution prevention controls.

(5) The construction of the relevant part of authorised development must be carried out in accordance with the EMP (Second Iteration) approved for that part.

(6) An EMP (Third Iteration) must be developed and completed by the end of the construction, commissioning and handover stage of any part of the authorised development, in accordance with the process set out in the Code of Construction Practice.

(7) The EMP (Third Iteration) must address the matters set out in the EMP (Second Iteration) that are relevant to the operation and maintenance of the authorised development

and must, except where contained in a LEMP approved under paragraph 5 of this Schedule, 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.
- (8) The authorised development must be operated and maintained in accordance with an EMP (Third Iteration).
- (9) In this paragraph, the “responsible planning authority” means—
- (a) The district council for the area in question; or
 - (b) in Greater London, the London borough council for the London borough in question.

Landscaping and ecology

5.—(1) Each part of the authorised development must be landscaped in accordance with a LEMP which sets out details of all proposed hard and soft landscaping works for that part and which has been submitted to and approved in writing by the responsible local planning authority prior to the opening of that part, following consultation by the undertaker with the bodies listed in Table 2.1 of the outline LEMP on matters related to their respective functions.

(2) A LEMP prepared under sub-paragraph (1) must be substantially in accordance with the outline LEMP and must—

- (a) reflect the design principles document and the mitigation measures set out in the REAC;
- (b) be based on the environmental masterplan annexed to the environmental statement; and
- (c) include details of—
 - (i) location, number, species mix, size and planting density of any proposed planting;
 - (ii) cultivation, importing of materials and other operations to ensure plant establishment;
 - (iii) existing trees and vegetation to be retained, with measures for their protection during the construction period;
 - (iv) proposed finished ground levels;
 - (v) implementation timetables for landscaping works;
 - (vi) commitments to aftercare, monitoring and maintenance activities relating to the landscaping and ecological features; and
 - (vii) measures for the replacement, in the first available planting season, of any tree or shrub planted as part of the LEMP that, within a period of 5 years or such period as may be specified in the LEMP after the completion of the part of the authorised development to which the relevant LEMP relates, dies, becomes seriously diseased or is seriously damaged in the construction of the authorised development.

(3) The undertaker must carry out, and maintain, each relevant part of the authorised development in accordance with the LEMP approved for that part under paragraph (1).

(4) 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.

(5) In this paragraph, the “responsible planning authority” means—

- (a) the district council for the area in question; or
- (b) in Greater London, the London borough council for the London borough in question.

Contaminated land and groundwater

6.—(1) 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, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority, the relevant highway authority, and the Environment Agency, and the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency on matters related to their respective functions.

(2) Where the undertaker determines 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 to and approved in writing by the responsible planning authority, following consultation by the undertaker with any other relevant planning authority and the relevant highway authority and the Environment Agency on matters related to their respective functions.

(3) Remediation must be carried out in accordance with the scheme approved under sub-paragraph (2).

(4) In this paragraph, the “responsible planning authority” means—

- (a) the county council in the case where there is a county council for the area in question;
- (b) the district council in the case where there is no county council for the area in question; or
- (c) in Greater London, the London borough council for the London borough in question.

Protected species

7.—(1) No part of the authorised development is to begin (except environmental surveys and monitoring) until for that part final pre-construction survey work has been carried out 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 relevant works.

(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—

- (a) a protected species is shown to be present, or where there is a reasonable likelihood of it being present;
- (b) application of the relevant assessment methods used in the environmental statement show that a significant effect is likely to occur which was not previously identified in the environmental statement; and

- (c) that effect is not addressed by any prior approved scheme of protection and mitigation established in accordance with this paragraph,

the relevant parts of the relevant works must cease until a scheme of protection and mitigation measures has been submitted to and approved in writing by the responsible planning authority.

(3) The undertaker must consult with Natural England on the scheme referred to in sub-paragraph (2) on matters related to their respective functions prior to submission to the responsible planning authority for approval, except where a suitably qualified and experienced ecologist, holding where relevant and appropriate a licence relating to the species in question, determines that the relevant works do not require a protected species licence.

(4) The relevant works under sub-paragraph (2) must be carried out in accordance with the approved scheme, unless otherwise agreed by the relevant local planning authority after consultation with Natural England on matters related to their functions, and under any necessary licences.

(5) In this paragraph, the “responsible planning authority” means—

- (a) the district council for the area in question; or
- (b) in Greater London, the London borough council for the London borough in question.

Surface and foul water drainage

8.—(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the mitigation measures set out in the REAC including means of pollution control, have been submitted and approved in writing by the responsible planning authority following consultation by the undertaker with the Environment Agency, the lead local flood authority, any other relevant planning authority and the relevant local highway authority on matters related to their respective functions.

(2) The surface and foul water drainage system must be constructed in accordance with the details approved under paragraph (1), unless otherwise agreed in writing by the responsible planning authority following consultation by the undertaker with the Environment Agency, the lead local flood authority, any other relevant planning authority and the relevant local highway authority on matters related to their respective functions, provided that the responsible planning authority is satisfied that any amendments to the approved details would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(3) In this paragraph, the “responsible planning authority” means—

- (a) the county council in the case where there is a county council for the area in question;
- (b) the district council in the case where there is no county council for the area in question; or
- (c) in Greater London, the London borough council for the London borough in question.

Historic environment

9.—(1) No part of the authorised development is to commence until for that part a site-specific written scheme for the investigation of areas of archaeological interest, reflecting the relevant mitigation measures set out in the AMS-OWSI, has been submitted to and approved in writing by the responsible planning authority, following consultation by the

undertaker with any other relevant planning authority and Historic England on matters related to their respective functions.

(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1).

(3) A copy of any analysis, reporting, publication or archiving required as part of the written scheme referred to in sub-paragraph (1) must be deposited with the Historic Environment Record of the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority or specified in the written scheme referred to in sub-paragraph (1).

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and notified to the relevant planning authority as soon as reasonably practicable from the date they are identified.

(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 of any notification served under sub-paragraph (4).

(6) If the relevant planning authority determines in writing 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 to be submitted in writing to and approved in writing by, the relevant planning authority, such approval not be unreasonably withheld or delayed.

(7) In this paragraph, “AMS-OWSI” means the draft Archaeological Mitigation Strategy and Outline Written Scheme of Investigation (Appendix 6.9 of the environmental statement, application document TR010032/APP/6.3).

(8) In this paragraph, the “responsible planning authority” means—

- (a) the county council in the case where there is a county council for the area in question;
- (b) the district council in the case where there is no county council for the area in question; or
- (c) in Greater London, the London borough council for the London borough in question.

Traffic management

10.—(1) The preliminary works must be carried out in accordance with section 6 of the outline traffic management plan for construction.

(2) No part of the authorised development is to commence until a traffic management plan for the construction of that part which is substantially in accordance with the outline traffic management plan for construction has been submitted to and approved in writing by the relevant local highway authority, following consultation by the undertaker with where different, the relevant planning authority and other bodies identified in Table 2.1 of the outline traffic management plan for construction on matters related to their functions.

(3) The authorised development must be carried out in accordance with the traffic management plan referred to in sub-paragraph (2).

Construction travel plans

11.—(1) No part of the authorised development is to commence until a travel plan for the construction of that part which is substantially in accordance with the framework construction travel plan has been submitted to and approved in writing by the relevant

local highway authority, following consultation by the undertaker with where different, the relevant planning authority on matters related to its function.

(2) The authorised development must be carried out in accordance with the construction travel plan referred to in sub-paragraph (1).

Fencing

12.—(1) Any permanent and temporary fencing and other means of enclosure for the highway works comprising the authorised development must be constructed and installed in accordance with Volume 1, Series 0300 of the Manual of Contract Documents for Highway Works unless—

- (a) otherwise specified in the REAC; or
- (b) any departures from that manual are agreed in writing by the responsible planning authority in connection with the authorised development, following consultation by the undertaker in respect of the authorised development comprising highways other than a special road or trunk road, the relevant local highway authority on matters related to their respective functions.

(2) In this paragraph, “highway works” includes the highway works comprised in Works Nos. 1A to 4B, 4D to 5W, 6A to 7Q, 7S to 9Z and excludes Works Nos. 4C, 5X, 7R, OH1 to OH8, OHT1 to OHT8, G1a to G10, TFGP1, MU1 to MU92, MUT1 to MUT32, E1 to E52, ET1, OSC1 to OSC12, FCA1 to FCA7, CA1 to CA16 and ULH01 to ULH16.

(3) In this paragraph, the “responsible planning authority” means—

- (a) the district council for the area in question; or
- (b) in Greater London, the London borough council for the London borough in question.

Travellers’ site in Thurrock

13.—(1) The replacement of the Gammon Field travellers’ site in Thurrock (Work No. 7R) must not commence until details of its layout and design have been submitted and approved in writing by the local planning authority, such approval not to be unreasonably withheld or delayed, following consultation by the undertaker with the local planning authority and the occupiers of the existing Gammon Field travellers’ site.

(2) The details submitted and approved under paragraph (1) must be in accordance with—

- (a) clause no. S11.12 of the design principles; and
- (b) any plans, details or schemes approved by the Secretary of State under this Schedule.

(3) Work No. 7R must be carried out in accordance with the details approved under paragraph (1) or determined under an appeal under article 65 (appeals to the Secretary of State) of this Order.

(4) If the local planning authority which receives an application for approval under sub-paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted approval.

(5) In this paragraph “Gammon Field travellers’ site” means the travellers’ site located at Long Lane, Grays Thurrock, RM16 2QH.

Traffic monitoring

14.—(1) Before the tunnel area is open for traffic, the undertaker must submit written details of an operational traffic impact monitoring scheme substantially in accordance with the wider network impacts management and monitoring plan for approval by the

relevant local highway authority following consultation by the undertaker with where different, the relevant planning authority and other bodies identified in Table 2.1 of the wider network impacts management and monitoring plan on matters related to their respective functions

(2) The scheme under paragraph (1) must include—

- (a) details of a before and after survey to establish the baseline traffic levels and the changes in traffic;
- (b) the locations to be monitored;
- (c) the methodology to be used to collect the required data;
- (d) the periods over which operational traffic is to be monitored;
- (e) the method of assessment of traffic data;
- (f) a programme for the provision of the collected data to local highway authorities

(3) The scheme approved under sub-paragraph (1) must be implemented by the undertaker unless otherwise agreed with the relevant local highway authority following consultation by the undertaker with where different, the relevant planning authority and other bodies identified in Table 2.1 of the wider network impacts management and monitoring plan on matters related to their respective functions.

Interaction with Thurrock Flexible Generation Plant

15.—(1) The undertaker must not carry out Work No. TFGP1 unless the Thurrock Flexible Generation Plant Development Consent Order 2022 is commenced.

(2) In this paragraph—

“commenced” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (time development begun), pursuant to the development consent order granted for the Thurrock Flexible Generation Plant;

“Thurrock Power Ltd” means the limited company with the company number 10917470, whose registered office is at 1st Floor, 145 Kensington Church Street, London, England, W8 7LP.

Carbon and energy management plan

16.—(1) No part of the authorised development must commence until a CEP (Second Iteration) for that part has been submitted to and approved in writing by the responsible planning authority.

(2) The CEP (Second Iteration) prepared under sub-paragraph (1) must be substantially in

accordance with the CEP (First Iteration) and must—

- (a) include reasonable measures for the management and minimisation of carbon emissions during construction of the authorised development; and
- (b) specify the measures to be taken in the event of any failure to meet a target set out in the CEP (First Iteration).

(3) The construction of the relevant part of the authorised development must be carried out in accordance with the CEP (Second Iteration) approved for that part under sub-paragraph (1).

(4) A CEP (Third Iteration) must be submitted to and approved in writing by the responsible planning authority as soon as reasonably practicable at the end of the construction, commissioning and handover stage of any part of the authorised development, in accordance with the process set out in the CEP (First Iteration).

(5) The CEP (Third Iteration) prepared under sub-paragraph (4) must address the matters set out in the CEP (Second Iteration) that are relevant to the operation and maintenance of the authorised development and must contain the long-term commitments

to manage and minimise carbon emissions during the operation and maintenance of the authorised development.

(6) The authorised development must be operated and maintained in accordance with a CEP (Third Iteration).

(7) In this paragraph, the “responsible planning authority” means—

- (a) the district council for the area in question; or
- (b) in Greater London, the London Borough Council for the London Borough in question.

Amendments to approved details

17. With respect to any requirement which requires the authorised development to be carried out in accordance with the details, plans or schemes approved under this Schedule, the approved details, plans or schemes are taken to include any amendments that may subsequently be approved in writing by the responsible planning authority, the relevant local highway authority, or in the case of any approval under paragraph 13, the local planning authority.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under Part 1

18.—(1) Where an application has been made to a discharging authority 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 Schedule, the consent, agreement or approval must not be unreasonably withheld or delayed.

(2) Where an application has been made to the a discharging authority or 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 discharging authority 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 or discharging authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 19 (further information); or
- (c) such longer period as may be agreed between the parties.

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

(4) Where—

- (a) an application has been made to the Secretary of State or discharging authority for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State or discharging authority does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report from a body required to be consulted by the undertaker under the requirement that considers it likely that the subject matter of the application would give rise to any materially new or materially

different environmental effects in comparison with those reported in the environmental statement,
the application is taken to have been refused by the Secretary of State or discharging authority at the end of that period.

Further information

19.—(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) In the event that the discharging authority considers such further information to be necessary the discharging authority 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.

(3) In the event that the discharging authority does not give such notification within that 21 business day period the discharging authority 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.

(4) 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 Part 1) and in this paragraph.

Details of consultation

20.—(1) Where any paragraph in this Schedule requires the undertaker to consult with any person or body, the undertaker must—

- (a) notify the person or body of the effect of paragraph 18(3) of this Schedule;
- (b) subject to sub-paragraph (2), provide that person or body with not less than 28 days from the provision of any documents being consulted upon for any response to the consultation;
- (c) give due consideration to any representations made by that person or body about the proposed application; and
- (d) include with its application to the discharging authority copies of any representations made by that person or body about the proposed application, and a written account of how any such representations have been taken into account in the submitted application.

(2) The undertaker may consent, such consent not to be unreasonably withheld, to an extension of period in sub-paragraph (1)(a) so that a person or body has not less than 42 days from provision of any documents being consulted upon to provide a response to the consultation following a request made by a person or body no later than 21 days from receipt of any documents being consulted upon.

(3) Where sub-paragraph (2) applies a person or body must provide a response to the consultation as soon as reasonably practicable.

Register of requirements

21.—(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 discharging 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 discharging 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 3 years following completion of the authorised development.

Anticipatory steps towards compliance with any requirement

22. 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.

Fees

23.—(1) Where an application is made to the discharging authority for written consent, agreement or approval in respect of a requirement, a fee calculated in accordance with the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a), as though the application were a reserved matter application, is to be paid to that authority.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 42 days of—

- (a) the application being rejected as invalidly made; or
- (b) the discharging authority failing to determine the application within the applicable period specified in paragraph 18(2), unless within that period the undertaker agrees, in writing, that the fee is to be retained by the discharging authority and credited in respect of a future application.

Appeals

24.—(1) Where the undertaker has made an application for a specified consent to the discharging authority, the undertaker may in writing appeal to the Secretary of State in the event that the discharging authority—

- (a) refuses the application;
- (b) grants the specified consent subject to conditions;
- (c) has not given notice to the undertaker of the discharging authority's decision on the expiry of the applicable period specified by paragraph 18(2);
- (d) requests the undertaker to provide further information in accordance with paragraph 19(1) and the undertaker considers that provision of any of the required information is not necessary to determination of the application;
- (e) has—
 - (i) received further information from the undertaker in response to a request made under paragraph 19(1);
 - (ii) notified the undertaker that information provided is inadequate; and
 - (iii) requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) An appeal made under sub-paragraph (1)(a), (b), (d) or (e), must be made within 42 days of the date of the notice of the relevant decision or (as the case may be) request.

(3) An appeal made under sub-paragraph (1)(c) must be made within 42 days of the expiry of the applicable period specified by paragraph 18(2).

(a) S.I. 2012/2920.

(4) The appeal process is as follows:

- (a) 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 the requirement consultees;
- (b) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (c) the discharging authority and the requirement consultees must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under sub-paragraph (b) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within 20 business days of receipt of written representations under sub-paragraph (c);
- (e) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(5) The appointment of the person under sub-paragraph (4)(b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(6) If the appointed person considers that further information is necessary to enable consideration of the appeal, the appointed person 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.

(7) Any further information required under sub-paragraph (6) is to be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 business days of that date.

(8) The appointed person may at any time extend any deadline specified in this Part of this Schedule.

(9) On an appeal under this paragraph, the appointed person 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 appeal as if the relevant application had been made to the appointed person in the first instance.

(10) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed by this Part of this Schedule, or as extended by the appointed person under sub-paragraph (8).

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

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

(13) If an approval is given by the appointed person under 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 appointed person 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 appointed person's determination.

(14) Except where a direction is given under sub-paragraph (15) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person are to be met by the undertaker.

(15) On application by the discharging authority or the undertaker, the appointed person 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 appointed person must have regard to any relevant provision of the Planning Practice Guidance as from time to time published by the Ministry of Housing, Communities and Local Government or any circular or guidance which may from time to time replace it.

Interpretation of Part 2 of Schedule 2

(16) In this Part of this Schedule—

“discharging authority” means the authority from whom a consent, approval or agreement is required or requested by the undertaker under the requirement concerned;

“requirement consultee” means any person named in a requirement which is the subject of an appeal as a person to be consulted by the discharging authority in discharging that requirement; and

“specified consent” means any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Schedule.