

SCHEDULES

SCHEDULE 2

Article 5

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

“completion or completed” means the relevant parts of the authorised development are completed and fully open to traffic;

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

“DMRB” means the Design Manual for Roads and Bridges, which accommodates all current standards, advice and other documents relating to the design, assessment and operation of trunk roads and motorways, or any equivalent replacement to the DMRB published;

“drainage strategy” means the strategy in Appendix 13.2 of the environmental statement;

“ecological works” means Work Nos. 56 and 97;

“EMP (Second Iteration)” means the second iteration of the environmental management plan produced in accordance with the DMRB, which is to be a refined version of the EMP (First Iteration) including more detailed versions of the outline plans contained or listed within the EMP (First Iteration) or any other plans as required;

“EMP (Third Iteration)” means the third iteration of the environmental management plan produced in accordance with the DMRB, which is a refined version of the EMP (Second Iteration) and which relates to the operational and maintenance phase of the authorised development;

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

“the environmental masterplan” means the document certified as the masterplan under article 50 (certification of documents, etc.);

“lead local flood authority” has the same meaning as in the Flood and Water Management Act 2010;

“IDB” means the Norfolk Rivers Drainage Board;

(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) S.I. 2017/1012.

Status: This is the original version (as it was originally made).

“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(3); and

“REAC” means the Register of Environmental Actions and Commitments forming table 3.1 of the EMP (First Iteration).

Time limits

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

Detailed design

3.—(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 engineering drawings and sections unless otherwise agreed in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to the engineering drawings and sections 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 Secretary of State 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.

Environmental Management Plan

4.—(1) No part of the authorised development, except for the ecological works, is to commence until an EMP (Second Iteration) for that part, substantially in accordance with the EMP (First Iteration) has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority, local highway authority, lead local flood authority, the Environment Agency and Natural England to the extent that the content of the EMP (Second Iteration) relates to matters relevant to their functions.

(2) The EMP (Second Iteration) for a part must be written in accordance with ISO14001 and so far as is relevant to that part of the authorised development, must reflect the mitigation measures required by the REAC and set out in the environmental statement and must include as many of the following plans and strategies as are applicable to the part of the authorised development to which it relates—

- (a) Site waste management plan;
- (b) Materials management plan;
- (c) Soil handling management plan;
- (d) Construction noise and dust management plan;
- (e) Construction communication strategy;
- (f) Landscape and ecology management plan;
- (g) Biosecurity management plan;

(3) 1981 c. 69.

- (h) Water monitoring and management plan;
- (i) Detailed heritage Written Scheme of Investigation;
- (j) Temporary surface water drainage strategy;
- (k) INNS management plan; and
- (l) Operational UXO emergency plan.

(3) The relevant part of the authorised development must be constructed in accordance with the approved EMP (Second Iteration).

(4) On completion of construction of each part of the authorised development the EMP (Third Iteration) relating to that part must be submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the relevant local highway authority to the extent that the content of the EMP (Third Iteration) relates to matters relevant to their functions.

(5) The relevant part of the authorised development must be operated and maintained in accordance with the EMP (Third Iteration).

Landscaping

5.—(1) The authorised development must be landscaped in accordance with a landscaping scheme which sets out details of all proposed hard and soft landscaping works and which has been submitted to and approved in writing by the Secretary of State, following consultation with—

- (a) the relevant planning authority; and
- (b) Natural England.

(2) The landscaping scheme must reflect the mitigation measures set out in the REAC and must be based on the environmental masterplan.

(3) The landscaping scheme prepared under sub-paragraph (1) must include details of—

- (a) location, number, species mix, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing trees to be retained, with measures for their protection during the construction period;
- (d) proposed finished ground levels;
- (e) implementation timetables for all landscaping works; and
- (f) measures for the replacement, in the first available planting season, of any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after the completion of the part of the authorised development to which the relevant landscaping scheme relates, dies, becomes seriously diseased or is seriously damaged.

(4) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other more suitable recognised codes of good practice, provided these meet or exceed the appropriate British Standards.

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 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.

Status: This is the original version (as it was originally made).

(2) Where the risk assessment prepared in accordance with sub-paragraph (1) 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 and to prevent any impacts on controlled waters must be submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority on matters related to its function and the Environment Agency.

(3) Remediation must be carried out in accordance with the approved scheme.

Protected species

7.—(1) No part of the authorised development is to commence until, for that part, final preconstruction 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 relevant works, 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 Secretary of State.

(3) The undertaker must consult with Natural England on the scheme referred to in subparagraph (2) prior to submission to the Secretary of State 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 Secretary of State after consultation by the undertaker with Natural England, and under any necessary licences.

Surface water drainage

8.—(1) No part of the authorised development, except for the ecological works, is to commence until, for that part, written details of the surface water drainage system, reflecting the drainage strategy and the mitigation measures set out in the REAC including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation by the undertaker with the lead local flood authority, IDB and the Environment Agency on matters related to their functions.

(2) The surface water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation by the undertaker with the lead local flood authority, IDB and the Environment Agency on matters related to its function, provided that the Secretary of State 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.

Archaeological remains

9.—(1) No part of the authorised development, is to commence until, for that part, a written scheme of investigation of areas of archaeological interest, reflecting the relevant mitigation measures set out in the REAC, has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority, Norfolk County Council Historic Strategy and Advice Team and Historic England on matters related to their functions.

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

Traffic management

10.—(1) No part of the authorised development comprising the construction, alteration or improvement of Work No. 1 is to commence until a traffic management plan substantially in accordance with the outline traffic management plan, for that part has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant highway authority on matters related to its function.

(2) The authorised development must be implemented in accordance with the traffic management plan referred to in sub-paragraph (1).

Fencing

11. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with Manual of Contract Documents for Highway Works maintained by or on behalf of the undertaker except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

Ecological works

12.—(1) No part of the ecological works is to commence until the siting, design, method of construction and timetable for delivery of the new ponds and ditches to be included within Work Nos. 56 and 97 have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and Natural England.

(2) The construction of the ponds and ditches forming part of the ecological works must thereafter be carried out in accordance with the approved details.

Ørsted works

13.—(1) No part of Work No. 94 is to commence without the written approval of Ørsted and all works must be carried out in accordance with requirements 10, 17, 18 and 22 in Schedule 1 Part 3 of the Hornsea Three Order.

Approvals and amendments to approved details

14. With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes approved under this Schedule, the approved details or schemes are taken to include any amendments that may subsequently be approved in writing by the Secretary of State.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

15.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order, the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 15 (further information); 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 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 at the end of that period.

Further information

16.—(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.

(3) In the event that the Secretary of State does not give such notification within that 21 day business 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.

(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 14 (applications made under requirements) and in this paragraph.

(5) 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

17.—(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

18. 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.

Details of consultation

19. In relation to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 15 business days for any response to the consultation and thereafter the details submitted to the Secretary of State for approval 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.

(4) 1971 c. 80.