

SCHEDULES

SCHEDULE 2

Article 5

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

“commence” means beginning to carry out any material operation (as defined in section 56(4)(1) of the 1990 Act) forming part of the authorised development other than environmental surveys and monitoring, archaeological mitigation works, pre-construction ecological mitigation, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of temporary means of enclosure, receipt and erection of construction plant and equipment, diversion and laying of services and site clearance, construction of welfare facilities and temporary buildings, temporary display of site notices, information and advertisements, and establishment of construction compounds, and “commencement” is to be construed accordingly;

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

“design principles report” means the document certified by the Secretary of State as the design principles report for the purposes of this Order;

“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 document certified by the Secretary of State as the Environmental Statement – Appendix 13.1 – Drainage Strategy Report (Parts 1 and 2 of 2) for the purposes of this Order;

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

“environmental masterplan” means figure 2.3 in the document certified by the Secretary of State as “the Environmental Statement - Chapter 2 - The Scheme and its Surroundings - Figures (Part 2 of 4) for the purposes of this Order;

“EMP (First Iteration)” means the plan certified by the Secretary of State as the First Iteration Environmental Management Plan for the purposes of this Order;

“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

(1) Section 56(4) was amended by paragraph 14 of Schedule 13 to the Localism Act 2011 (c. 20) and section 32 of and paragraph 10 of Schedule 12 to, the Planning and Compensation Act 1991 (c. 34).

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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);

“flood risk assessment” means the document certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“lead local flood authority” means Hampshire County Council;

“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;

“Outline Landscape and Ecological Management Plan” means that plan certified by the Secretary of State as the Environmental Statement – Appendix 7.6 - Outline Landscape and Ecological Management Plan for the purposes of this Order;

“outline traffic management plan” means the document certified by the Secretary of State as the outline traffic management plan for the purposes of this Order;

“protected species” means species which are subject to protection under the laws of England or which are “European protected species”.

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.

Environmental Management Plan

3.—(1) No part of the authorised development 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 and local highway authority to the extent that the content of the EMP (Second Iteration) relates to matters relevant to their functions.

(2) The EMP (Second Iteration) must—

- (a) contain a record of all the sensitive environmental features that have the potential to be affected by the construction of the authorised development;
- (b) incorporate the measures referred to in the environmental statement as being incorporated in the EMP (First Iteration);
- (c) require adherence to working hours of 07:00 to 19:00 on Mondays to Friday and 07:00 to 13:00 on Saturdays with no working hours on Sundays and public holidays, except for—
 - (i) works requiring the full or partial closure of, or otherwise adversely affecting the operation of, the M3, A33, and A34 carriageway;
 - (ii) works associated with the diversion or removal of existing utilities;
 - (iii) works associated with traffic management and signal changes;

- (iv) works associated with tie-ins to existing carriageways;
- (v) any emergency works, or works required for engineering, safety, or efficiency purposes;
- (vi) any works for which different working hours have been agreed with parties who will or may be affected by those works and recorded in the approved EMP (Second Iteration), in which case the EMP (Second Iteration) must require adherence to those working hours; and
- (vii) as otherwise agreed by the relevant planning authority in advance.

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

(4) Upon completion of construction of the authorised development the EMP (Second Iteration) must be converted into the EMP (Third Iteration). The EMP (Third Iteration) must be submitted to the Secretary of State for approval within 28 days of the opening of the authorised development for public use.

(5) The authorised development must be operated and maintained in accordance with the EMP (Third Iteration) approved under paragraph (4).

Details of consultation

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

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

(3) The 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.

(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.

Landscaping

5.—(1) No part of the authorised development is to commence until a written landscaping scheme for that part has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions, and the local highway authority.

(2) The landscaping scheme prepared under sub-paragraph (1) must be based on the Outline Landscape and Ecological Management Plan, environmental masterplan, and EMP (First Iteration).

(3) The landscaping scheme prepared under sub-paragraph (1) must include details of hard and soft landscaping works, including—

- (a) location, number, species, size, timing and planting density of any proposed planting, including advanced planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;

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- (d) hard surfacing materials;
- (e) details of existing trees to be retained, with measures for their protection during the construction period outlined within a Tree Protection Plan and Arboricultural Method Statement;
- (f) implementation and maintenance timetables for all landscaping works; and
- (g) landscaping works associated with the provision of any fences and walls.

Implementation and maintenance of landscaping

6.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under paragraph 5(1).

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

(3) Any tree, shrub or chalk grassland planted as part of the landscaping scheme that, within a period of 10 years after planting, is removed, dies or becomes, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

(4) The reference to any tree or shrub being “removed” in sub-paragraph (3) above does not apply to those trees or shrubs removed in accordance with any approved landscape maintenance works and timetable forming part of the landscaping scheme.

Fencing

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

Land and groundwater contamination

8.—(1) In the event that contaminated material, including impacted 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 contamination and must report it immediately in writing to the Secretary of State, the Environment Agency and the relevant planning authority, and in agreement with the Environment Agency and the relevant planning authority undertake a risk assessment of the contamination, and sub-paragraphs (2) and (3) will apply.

(2) Where the undertaker determines that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be prepared and submitted to and approved in writing by the Secretary of State following consultation with the Environment Agency and the relevant planning authority.

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

Archaeology

9.—(1) No part of the authorised development is to commence until for that part a written scheme of investigation, reflecting the mitigation measures included in the Archaeology and Heritage Mitigation Strategy prepared substantially in accordance with the Archaeology and Heritage Outline Mitigation Strategy appended to Chapter 6 of the environmental statement, with provision for sub-written schemes of investigation for each area and each phase (strip, map and sample,

geoarchaeological investigation, watching brief) as required, has been prepared in consultation with the City Archaeologist and submitted to and approved in writing by the Secretary of State.

(2) The authorised development must be carried out in accordance with the Archaeology and Heritage Mitigation Strategy and written schemes of investigation referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State.

(3) A programme of archaeological reporting, post excavation, archiving and publication undertaken in accordance with written schemes of investigation referred to in sub-paragraph (1) must be consulted upon with the City Archaeologist and implemented within a timescale discussed with the City Archaeologist and deposited with the Historic Environment Record of the relevant planning authority within an agreed time period.

(4) Any nationally significant archaeological remains not previously identified which are revealed when carrying out the authorised development must be—

- (a) retained in situ temporarily and reported to the City Archaeologist and Historic England as soon as reasonably practicable; and
- (b) subject to appropriate mitigation, including post-excavation process, as set out in the Archaeology and Heritage Mitigation Strategy and consulted upon with the City Archaeologist and Historic England.

(5) No construction operations are to take place within 20 metres of the identifiable extent of the nationally significant remains referred to in sub-paragraph (4) until an appropriate mitigation strategy has been discussed and consulted upon with the City Archaeologist and Historic England, unless otherwise agreed in writing by the Secretary of State.

(6) On completion of the authorised development, suitable resources and provisions for long term storage of the archaeological archive will be agreed with the City Archaeologist.

(7) References in this paragraph to consultation, reporting, and discussion with the City Archaeologist shall include consultation, reporting, and discussion with the nominated archaeologist for South Downs National Park Authority to the extent that it relates to matters relevant to their functions.

Protected species

10.—(1) In the event that any protected species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must cease construction works near their location and report it immediately to the Ecological Clerk of Works.

(2) The undertaker must prepare a written scheme for the protection and mitigation measures for any protected species that were not previously identified in the environmental statement or nesting birds found when carrying out the authorised development. Where nesting birds are identified, works should cease within 10 metres of the nest until birds have fledged and the nest is no longer in use.

(3) The undertaker must implement the written scheme prepared under sub-paragraph (2) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

Traffic management

11.—(1) No part of the authorised development is to commence until a traffic management plan for the construction of that part of the authorised development, substantially in accordance with the outline traffic management plan has been submitted to and approved in writing by the Secretary of State following consultation with the local highway authority.

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

Detailed design

12.—(1) The authorised development must be designed in detail and carried out so that it is in accordance with—

- (a) the preliminary scheme design shown on the works plans and the engineering and structural drawings and sections;
- (b) the design principles set out in the design principles report,

unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions and the local highway authority on matters related to its functions and provided that the Secretary of State is satisfied that any amendments to the works plans and the engineering drawings and sections showing departures from the preliminary design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) The undertaker in relation to the detailed design of the authorised development must have regard to the amended duty to seek to further the purposes specified in section 5(1) of the National Parks and Access to Countryside Act 1949 as set out in section 11A of that Act.

(3) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding works plans or engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Surface water drainage

13.—(1) No part of the authorised development is to commence until written details of the surface water drainage system for that part, in accordance with the flood risk assessment and drainage strategy, reflecting the mitigation measures in chapter 13 of the environmental statement and including means of pollution control, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to their functions, the lead local flood authority, the Environment Agency, and the local highway authority where that the surface water drainage system interacts with a highway maintainable at the expense of that local highway authority.

(2) The drainage system must be constructed and maintained in accordance with the approved details referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority, the lead local flood authority and the Environment Agency.

Noise Mitigation

14.—(1) No part of the authorised development is to commence until written details of proposed noise mitigation in respect of the use and operation of that part of the authorised development, including low noise surfacing, have been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authorities, the South Downs National Park Authority and the local highway authority on matters related to their functions.

(2) The written details referred to in sub-paragraph (1) must either reflect the mitigation measures included in the environmental statement or, where the mitigation proposed materially differs from the mitigation identified in the environmental statement, the undertaker must provide evidence with the written details submitted that the mitigation proposed would not give rise to any materially new

or materially different environmental effects in comparison with those reported in the environmental statement taking into account the mitigation identified in it.

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

Height Restrictions

15. Any static unit providing welfare or other facilities within the temporary construction site compound as part of Work No. 38 shall be a single storey unit and shall not exceed a height of 4 metres, the measurement of which being from the external base to the external roof of the static unit but shall not include the depth of any foundation reasonably required to secure the structure or height of any aerial, mast, satellite dish, chimney stack, flue, pipe, solar panel or other equipment reasonably required to be affixed to the static unit.

Approvals and amendments to approved details

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

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

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

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 18 (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 referred to in paragraph 4 (details of consultation) stating that, in the view of a body required to be consulted by the undertaker under the requirement in question, the subject matter of the application is likely to give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement,

then the application is taken to have been refused by the Secretary of State at the end of that period.

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Further information

18.—(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 this 21 day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(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 17 (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(3).

Register of requirements

19.—(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

20. If before this Order came into force the undertaker or any other person took any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

Details of consultation

21. With respect 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 28 days for any response to the consultation and 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.

(3) 1971 c. 80.