

Lower Thames Crossing Schedule 2 Requirements and Explanatory Memorandum

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Lower Thames Crossing

Schedule 2 Requirements and Explanatory Memorandum

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Covering Note

This document is a draft of one of a series of Control Documents that will form part of our planned DCO application. Following this consultation, we will carefully consider your feedback as we finalise the documents for our planned submission of the DCO application for the Lower Thames Crossing later this year.

The Schedule 2 Requirements are similar to conditions for a planning permission. These set out the conditions that we would be required to follow when proceeding with the construction and operation of the development authorised by the DCO. This includes reference to the other securing mechanism documents provided as part of this consultation.

An Explanatory Memorandum has been prepared to clearly explain the effect each of the Requirements.

These documents reflect the changes to the design described in this consultation. Updates may be made to this document to reflect feedback received from stakeholders ahead of submitting the document as part of the DCO application.

As this is a draft control document, there will be references to the upcoming Development Consent Order (DCO). Any documents referenced that will form the DCO will be mentioned with a (REF TBC).

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1 Explanation of Schedule 2 of the Draft Development Consent Order

1.1 Introduction

- 1.1.1 The suite of documents published for the Lower Thames Crossing community impacts consultation includes the current draft of Schedule 2 to the draft Development Consent Order (the Order). The Order is one of the documents that will be included in the application to the Planning Inspectorate.
- 1.1.2 Schedule 2 to the Order sets out the “requirements” that Highways England would comply with if the Order is approved. “Requirements” are the equivalents of planning conditions imposed on Town and Country Planning Act planning permissions and they govern how the Lower Thames Crossing Project (the Project) would be delivered.
- 1.1.3 The current draft of Schedule 2 is therefore being made available as part of community impacts consultation to help consultees understand, and should they wish to provide feedback on, how construction and operation of the Project would be controlled, and how commitments being made by the Project would be secured.
- 1.1.4 The requirements in Schedule 2 reflect the processes and procedures usually employed by Highways England when implementing nationally significant infrastructure schemes like the Project.
- 1.1.5 The requirements provide that the various schemes, details and plans to be approved must reflect the measures and approaches set out in:
- a. the Register of Environmental Actions and Commitments (REAC) which contains all of the environmental mitigation measures Highways England is committing to
 - b. the Code of Construction Practice which is the first iteration of the environmental management plan and which contains construction related measures (and, if the Project is granted consent, will include the REAC)
 - c. the Design Principles
 - d. the outline site waste management plan
 - e. The outline materials handling plan
 - f. the outline landscape and ecology management Plan (the outline LEMP)
 - g. the outline traffic management plan for construction
 - h. the Framework Construction Travel Plan
 - i. the wider networks impacts monitoring and management plan

- 1.1.6 Current drafts of the above “control documents” form part of the forthcoming consultation.
- 1.1.7 Approvals for final details of the Project are to be sought from the Secretary of State for Transport, following consultation with the local planning authority and/or another relevant third party. The Secretary of State is the appropriate discharging authority for the requirements given the number of local authorities across the Project, the need for consistency in decision making, and the complexity of the Project. This is consistent with other highways DCOs.
- 1.1.8 It should be noted that Schedule 2, and the related “control documents”, represent current drafts. Accordingly, they are subject to further change in response to the community impacts consultation, and further refinement of the Project, before the application is submitted.

1.2 Explanation of Requirements

- 1.2.1 The purpose and effect of the requirements are as follows:

Requirement 1: Interpretation

- 1.2.2 Requirement 1 contains a number of definitions used in Part 1 of Schedule 2; this includes definitions of all of the “control documents” mentioned above which contain the commitments.
- 1.2.3 We have also provided the definition of “commencement”. This makes it clear that a number of works (such as ecological investigations and preparatory works) that would constitute a “material operation” may be carried out without meaning that the authorised development has been “commenced”. This enables Highways England to undertake certain preparatory works prior to the submission of relevant details for approval under the requirements contained in Schedule 2, which Highways England considers proportionate and reasonable in the context of delivering nationally significant infrastructure. These activities may in some cases need to be carried out in order to comply with the pre-commencement requirements (for example, to inform assessments and proposals required to be submitted for approval).
- 1.2.4 Highways England’s view is that it is reasonable to carry out low-impact preparatory works following the grant of the Order while it is working to discharge the pre-commencement requirements, thereby helping to minimise the construction timetable. The definition of commencement closely follows the definition contained in the consented M42 Junction 6 Development Consent Order 2020, with the exception that (i) excluded utilities works would not be permissible as pre-commencement works (“excluded utilities works” will be significant utilities works which will be listed in the DCO itself) and (ii) site clearance is limited to vegetation clearance for advanced compound areas shown in the Code of Construction Practice. As explained below, Requirement 4 requires such activities to be carried out with appropriate environmental controls.
- 1.2.5 Paragraph 1(2) of Part 1 of Schedule 2 confirms that references to “part” throughout Schedule 2 are references to a stage or element of the authorised development. Similarly, Paragraph 1(3) confirms that schemes and details may be approved in relation to a specified part of the authorised development (e.g.,

a requirement could be discharged across a number of management plans for different phases or stages of the development, rather than one single management plan for the whole Project).

Requirement 2: Time limits

- 1.2.6 Requirement 2 provides that the authorised development must not commence later than five years from the date of the Order coming into force.

Requirement 3: Detailed design

- 1.2.7 Requirement 3 requires the authorised development to be designed in detail and carried out in accordance with the Design Principles document (REF TBC) and the preliminary scheme design shown on the Engineering Drawings and Sections (REF TBC), and the General Arrangement (REF TBC) which will form part of the DCO application unless otherwise agreed in writing by the Secretary of State, provided 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 assessments which will be submitted with the DCO application.
- 1.2.8 Requirement 3 allows for a proportionate and reasonable level of flexibility in the final design of the Project, something that is considered necessary and appropriate in delivering complex major infrastructure projects such as this. Importantly, that flexibility is limited to the scope of the assessment of effects in the Environmental Statement submitted with the application.

Requirement 4: Construction and handover environmental management plans

- 1.2.9 Requirement 4(1) requires that pre-commencement activities (being activities such as environmental surveys and monitoring) referenced above must be carried out in accordance with a pre-commencement environmental management plan including the measures in the pre-commencement REAC. This will ensure that these pre-commencement activities are carried out in accordance with applicable mitigation measures, even though they will be carried out before the detailed plans and schemes are approved under Schedule 2.
- 1.2.10 Requirement 4(2) requires the preparation of an Environmental Management Plan (EMP) (Second Iteration) in consultation with the relevant planning authority and Natural England for its approval by the Secretary of State. The EMP (Second Iteration) will be based substantially on the Code of Construction Practice prepared as part of the DCO application. The EMP will fulfil the construction-related objectives and measures as outlined in the REAC. The EMP (Second Iteration) will also need to be substantially in accordance with other control documents such as the materials handling plan, and the outline site waste management plan.
- 1.2.11 Following the construction of the relevant parts of the authorised development, the EMP (Second Iteration) would be replaced by an EMP (Third Iteration) which will address the matters set out in the Code of Construction Practice that are relevant to the operation and maintenance of that part of the authorised

development (except if these are covered by Requirement 5). The authorised development must be operated and maintained in accordance with an EMP (Third Iteration).

Requirement 5: Landscaping and ecology

- 1.2.12 Requirement 5 requires the preparation of a landscape and ecological management plan, or “LEMP” covering all hard and soft landscaping and ecological mitigation works. The LEMP must reflect the design principles document and mitigation measures set out in the REAC and must be based on the Environmental Masterplan contained in the Environmental Statement. In relation to a LEMP which includes any land in a Site of Special Scientific Interest, Natural England must also be consulted (in addition to the usual requirement to consult the relevant local planning authorities).

Requirement 6: Contaminated land and groundwater

- 1.2.13 Requirement 6 makes provision for dealing with any contaminated land and groundwater discovered during construction of the works that was not previously identified in the Environmental Statement, in consultation with the relevant planning authority and the Environment Agency. It requires the preparation of a risk assessment and, where remediation is determined to be necessary, a written scheme and programme for the remedial measures must be submitted for approval.

Requirement 7: Protected species

- 1.2.14 Requirement 7 states Highways England must carry out final pre-construction survey work to establish whether European or nationally protected species are present on any of the land affected or likely to be affected by any part of the relevant works, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.
- 1.2.15 Where, following pre-construction survey work or at any time when carrying out the authorised development, the conditions listed in sub-paragraph (2) are met, then the relevant parts of the relevant works must not begin until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State. Consultation with Natural England is required unless a qualified ecologist determines that the works in question do not require a protected species licence.

Requirement 8: Surface and foul water drainage

- 1.2.16 Requirement 8 provides that no part of the authorised development can commence until written details of a surface and foul water drainage system, reflecting the mitigation measures in the REAC including means of pollution control, have been prepared in consultation with the relevant planning authority and approved in writing by the Secretary of State.

Requirement 9: Archaeological interests

- 1.2.17 Requirement 9 requires Highways England to prepare a written scheme of investigation of areas of archaeological interest (to be approved by the Secretary of State), and which must reflect the mitigation measures set out in the draft Archaeological Mitigation Strategy and Outline Written Scheme of

Investigation. The requirement also requires Highways England to retain in place any archaeological remains it discovers during the construction of the authorised development which have not previously been identified, and report these to the local planning authority. Temporary limitations are then placed on construction activity within 10 metres of the archaeological remains to allow assessment of whether further investigation is required. If so, the investigation and recording of the remains must be undertaken in accordance with a written scheme approved by the local planning authority unless otherwise agreed by the Secretary of State.

Requirement 10: Traffic management

- 1.2.18 Requirement 10 provides that no part of the authorised development can commence until a traffic management plan for the construction of that part (which is substantially in accordance with the the outline traffic management plan for construction has been prepared and approved by the Secretary of State following consultation with the bodies identified in the outline traffic management plan for construction.

Requirement 11: Construction travel plans

- 1.2.19 Requirement 11 provides that provides that no part of the authorised development can commence until a construction travel plan for the construction of that part (which is substantially in accordance with the framework construction travel plan has been prepared and approved by the Secretary of State following consultation with the relevant planning authority.

Requirement 12: Fencing

- 1.2.20 Requirement 12 sets out the permanent and temporary fencing and permanent acoustic barriers for highway related works comply with the relevant highways standards.

Requirement 13: Travellers' site in Thurrock

- 1.2.21 Requirement 13 provides that the details and layout of the replacement of the traveller's site in Thurrock must be approved by Thurrock Council. It further provides that any such details must be in accordance with the design principles and any other plans or schemes approved by the Secretary of State. An appeal mechanism to the Secretary of State is provided for in the case of a refusal or a grant subject to conditions.

Requirement 14: Traffic monitoring

- 1.2.22 Requirement 14 requires Highways England to submit a monitoring scheme to the Secretary of State prior to the opening of the Project. This monitoring strategy must be in accordance with the wider impacts monitoring and management plan. This will require Highways England to carry out monitoring of the wider road network, and consider interventions which may be suitable.
- 1.2.23 Part 2 of Schedule 2 provides a clear procedure for the discharge of requirements. It sets out clear time limits for decisions to be made and makes provision for circumstances where the Secretary of State requires further information to be provided in relation to an application for the discharge of a requirement.

- 1.2.24 Paragraph 16(4) is based on the consented A63 (Castle Street Improvement, Hull) Development Consent Order 2020, and ensures that Highways England gives due consideration to any representations made by the relevant planning authority when they are consulted under Schedule 2. It also requires that representations received from statutory bodies or local authorities are provided to the Secretary of State when an application is made in relation to a scheme or plan submitted for their approval.
- 1.2.25 Paragraph 19 establishes an appeal process in circumstances relating to Requirement 13 or where a local authority issues a notice under section 60, or does not grant consent or grants conditional consent under section 61, of the Control of Pollution Act 1974. Its aim is to streamline the appeal process, thereby minimising the potential for unnecessary delay to the Project.
- 1.2.26 Part 2 of Schedule 2 further provides that any anticipatory steps which Highways England takes to comply with the requirements before the Order is made will be treated as effective in complying with the requirements once the Order is made, thereby avoiding the need to repeat such steps.

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2 Schedule 2 Requirements

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“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 LEMP” means the outline landscape and ecology management plan referenced in Schedule 16 (documents to be certified) certified by the Secretary of State;

“outline materials handling plan” means the outline materials handling plan referenced in Schedule 16 (documents to be certified) certified by the Secretary of State;

“outline site waste management plan” means the outline site waste management plan referenced in Schedule 16 (documents to be certified) certified by the Secretary of State;

“pre-commencement activities” means the activities which are excluded from the definition of commencement under article 2 of this Order;

“pre-commencement EMP” means section [3] of the Code of Construction Practice;

“pre-commencement REAC” means those measures in the REAC applying to the pre-commencement activities contained in the Code of Construction Practice;

“REAC” means the register of environmental actions and commitments contained in Appendix 2.2 of the environmental statement;

“relevant highway authority” means the highway authority (as defined in the Highways Act 1980) for the area to which the provision relates;

“relevant planning authority” means the planning authority for the area to which the provision relates; and

“wider network impacts monitoring and management 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 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 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 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 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.

(a) 1981 c. 69.

(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.

Construction and handover environmental management plans

4.—(1) The pre-commencement activities must be carried out in accordance with pre-commencement EMP (including the measures in the pre-commencement REAC).

(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 Secretary of State, following consultation by the undertaker with the relevant planning authority and Natural England 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 plans for the management of—

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

(4) The construction of the authorised development must be carried out in accordance with an approved EMP (Second Iteration).

(5) 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.

(6) 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 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.

(7) The authorised development must be operated and maintained in accordance with an EMP (Third Iteration).

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 Secretary of State, following consultation by the undertaker with—

- (a) the relevant planning authority; and

- (b) Natural England in respect of a LEMP which is proposed to include any land in the Shorne and Ashenbank Woods Site of Special Scientific Interest and/or the South Thames Estuary and Marshes Site of Special Scientific Interest,

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) 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.

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.

(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 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 scheme approved under sub-paragraph (2).

Protected species

7.—(1) No part of the authorised development is to commence 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 Secretary of State.

(3) The undertaker must consult with Natural England on the scheme referred to in sub-paragraph (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 with Natural England, and under any necessary licences.

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 Secretary of State following consultation by the undertaker with the relevant planning authority on matters related to its function.

(2) The surface and foul 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 relevant planning authority 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 interests

9.—(1) No part of the authorised development is to commence until for that part a 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 Secretary of State, following consultation by the undertaker with the relevant planning authority on matters related to its function.

(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State.

(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 reported 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 notice served under sub-paragraph (4) unless otherwise agreed in writing by the Secretary of State.

(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, unless otherwise agreed by the Secretary of State, 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)].

Traffic management

10.—(1) 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 Secretary of State, following consultation by the undertaker with the relevant highway authorities, relevant planning authorities and other bodies identified in the outline traffic management plan for construction on matters related to their function.

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

Construction travel plans

11.—(1) No part of the authorised development is to commence until a construction 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 Secretary of State, following consultation by the undertaker with the relevant highway authority and 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. Any permanent and temporary fencing and other means of enclosure for 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) the fencing and other means of enclosure relates to non-highway works;
- (b) otherwise specified in the REAC; or
- (c) any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development, following consultation by the undertaker with the relevant planning authority on matters relates to its functions.

Travellers’ site in Thurrock

13.—(1) The replacement of the 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 any persons it considers appropriate.

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

- (a) the design principles document; 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 paragraph 19 of this Schedule.

(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.

Traffic monitoring

14.—(1) Before the tunnels are open for traffic, the undertaker must submit written details of a traffic impact monitoring scheme substantially in accordance with the wider network impacts monitoring and management plan for approval by the Secretary of State following consultation by the undertaker with the local highway authorities and bodies identified in the that plan.

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

- (a) a before and after survey to assess the changes in traffic;
- (b) the locations to be monitored and the methodology to be used to collect the required data;
- (c) the periods over which traffic is to be monitored;
- (d) the method of assessment of traffic data; and
- (e) baseline traffic levels.

(3) The scheme approved under sub-paragraph (1) must be implemented by the undertaker.

Amendments to approved details

15. 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, or in the case of any approval under paragraph 13, the local planning authority.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made to the Secretary of State under Part 1

16.—(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 17 (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.

(4) Where any paragraph in this Schedule requires the undertaker to consult with any authority or statutory body, the undertaker must—

- (a) provide all information to that authority or statutory body subsequently to be submitted to the Secretary of State as constituting the undertaker's proposed application;
- (b) give due consideration to any representations made by that authority or statutory body about the proposed application; and
- (c) include with its application to the Secretary of State copies of any representations made by that authority or statutory body about the proposed application, and a written account of how any such representations have been taken into account in the submitted application.

Further information

17.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the Secretary of State does not give such notification within that 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 14 (applications made to the Secretary of State under Part 1) and in this paragraph.

(4) In this paragraph, "business day" means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a).

Register of requirements

18.—(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.

Appeals to the Secretary of State

19.—(1) The undertaker may appeal to the Secretary of State in the event that a local planning authority—

- (a) refuses an application for any approval required by paragraph 13(1) of this Schedule or grants such an approval subject to conditions; or

(a) 1971 c. 80.

- (b) issues a notice further to sections 60 or 61 of the Control of Pollution Act 1974^(a).
- (2) The appeal process applicable under sub-paragraph (1) is as follows—
 - (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision, or the date by which a decision was due to be made, as the case may be;
 - (b) 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 local authority and affix a notice to a conspicuous object on or near the site of the works which are the subject of such appeal, which must give details of the decision of the local authority and notice that an appeal has been made together with the address within the locality where the appeal documents may be inspected and details of the manner in which representations on the appeal may be made;
 - (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;
 - (d) the local authority must submit their written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
 - (e) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations under sub-paragraph (d); and
 - (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable but in any event no later than 10 business days from receipt of written representations under sub-paragraph (e).

(3) The appointment of the person under sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider 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.

(5) Any further information required under sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

(6) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.

(7) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).

(8) 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 local authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(9) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion

(a) 1974 c. 40.

of the appointed person such written representations as have been sent outside the relevant time limits.

(10) The appointed person may proceed to a decision even though no written representations have been made within the relevant 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.

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

(12) Except where a direction is given under sub-paragraph (13) requiring some or all of the costs of the appointed person to be paid by the local authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) The appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid.

(14) 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 the relevant Planning Practice Guidance published by the Ministry for Housing, Communities and Local Government or such guidance as may from time to time replace it.

Anticipatory steps towards compliance with any requirement

20. 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.

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