

- 3.5.1 the requirements of paragraph 1.2;
- 3.5.2 the circumstances of the request for the Operational Derogation received from the Contractor as set out in the Derogation Request Form;
- 3.5.3 the terms of the approved SFTP for the Main Tunnel Drive Site or Sites and / or the Foreshore Site or Sites in question; and
- 3.5.4 any comments and information received from the Relevant Authority and stakeholders notified under paragraph 3.3.3 further to paragraph 3.4.

For the avoidance of doubt the Undertaker shall not be prevented from making its decision further to this paragraph if the date for approval of the Operational Derogation specified in box 12 of the Derogation Request Form has been reached without any comment being received from any or all of the members of the Relevant Authority and the stakeholders notified under paragraph 3.3.3 further to paragraph 3.4.

- 3.6 The decision of the Undertaker under paragraph **3.5** (including the reasons for it) shall be recorded on the Derogation Decision Notice which shall be provided to:
 - 3.6.1 the Contractor;
 - 3.6.2 the individual members of the Relevant Authority; and
 - 3.6.3 any other stakeholder who should be notified of the Derogation further to the SFTP for the Main Tunnel Drive Site or Foreshore Site to which the Derogation applies; and
 - 3.6.4 the Derogation Event Notification Form, the Derogation Request Form and the Derogation Decision Notice shall be included in the Regular Report.
- 3.7 The Contractor will implement the Derogation as approved by the Undertaker.

4 **Unforeseen Derogation process**

- 4.1 The process described below and shown diagrammatically in the flow chart at **Appendix 6** is the process for approving Unforeseen Derogations.
- 4.2 As soon as possible after the Undertaker issues an approved Derogation Event Notification Form under paragraph **2.4** the Contractor will issue a Derogation Request Form in respect of the notified Unforeseen Derogation to the Undertaker specifying a reasonable timetable for approval in Box 12 of the Derogation Request Form for its initial review and acceptance (subject to any amendments the Undertaker may reasonably require).
- 4.3 Once accepted by the Undertaker (including any amendments the Undertaker may reasonably require) the Contractor shall submit the Derogation Request Form to:
 - 4.3.1 the Undertaker
 - 4.3.2 the individual members of the Relevant Authority;
 - 4.3.3 any other stakeholder who should be notified of the Derogation further to the SFTP for the Main Tunnel Drive Site or Foreshore Site to which the Derogation applies.

- 4.4 The Relevant Authority (and its constituent members) and any stakeholder notified under paragraph **4.3.3** shall be entitled to provide comments and information in respect of local circumstances and other matters relevant to the proposed Derogation.
- 4.5 The Undertaker will determine whether in its reasonable opinion the Derogation should be approved having regard to:
- 4.5.1 the requirements of paragraph 1.2;
- 4.5.2 the circumstances of the request for the Operational Derogation received from the Contractor as set out in the Derogation Request Form;
- 4.5.3 the terms of the approved SFTP for the Main Tunnel Drive Site or Site and / or the Foreshore Site or Sites in question; and
- 4.5.4 any comments and information received from the Relevant Authority and stakeholders notified under paragraph 4.3.3 further to paragraph 4.4.
- 4.6 If:
- 4.6.1 the Undertaker concludes that in its reasonable opinion the Operational Derogation should be approved it shall notify the Contractor who shall submit the Derogation Request Form to the individual members of the Relevant Authority for determination further to paragraph 4.7 and provide a copy of the submitted Form to the Undertaker; or
- 4.6.2 the Undertaker shall refer the Derogation Request Form back to the Contractor and confirm in writing why it does not believe the request for the Operational Derogation should be referred to the Relevant Authority for determination further to paragraph 4.7.
- 4.7 Subject to paragraph **4.12** an application for determination of a Derogation Request Form referred to the Relevant Authority will be determined by the Relevant Local Authority in consultation with the other members of the Relevant Authority and paragraph **4.7.1** to paragraph **4.7.3** and paragraph 4.11 shall apply.
- 4.7.1 Where an application relates to Main Tunnel Drive Sites and / or Foreshore Sites in two or more different local authority areas the application will be deemed to be an individual application to each Relevant Local Authority and will be determined separately by each Relevant Local Authority, in consultation with the other members of the Relevant Authority.
- 4.7.2 The Relevant Local Authority may either:
- (a) approve the application;
- (b) approve the application with conditions which may include a requirement to review the operation of the approved Derogation; or
- (c) refuse the application in which case it will:
- (i) give the reasons for the refusal; and
- (ii) use its reasonable endeavours to indicate what amendment to the application would address its reasons for refusing the application

including any alternative response to the Operational Derogation Event to that proposed in the application.

- 4.7.3 In making its decision under this paragraph 4.7 the Relevant Local Authority will have regard to:
- (a) the requirements of paragraph 1.2;
 - (b) the circumstances of the request for the Operational Derogation received from the Contractor as set out in the Derogation Request Form;
 - (c) the terms of the approved SFTP for the Main Tunnel Drive Site or Site and / or the Foreshore Site or Sites in question;
 - (d) any advice it has received in writing concerning the Derogation that has been applied for from the other members of the Relevant Authority; and
 - (e) any comments and information received from the Relevant Authority and stakeholders notified under paragraph 4.3.3 further to paragraph 4.4.
- 4.8 Upon receipt of the Relevant Local Authority decision under paragraph **4.7** the Undertaker may either:
- 4.8.1 accept the decision of the Relevant Local Authority; or
 - 4.8.2 refer the grant of the application subject to conditions or the refusal of the application to the Independent Panel for determination.
- 4.9 Subject to paragraph **4.12** upon receiving a referral of an application for an Operational Derogation further to paragraph **4.8.2** the Independent Panel will review the application and will either:
- 4.9.1 approve the application;
 - 4.9.2 approve the application with conditions; or
 - 4.9.3 refuse the application in which case it will:
 - (a) give the reasons for the refusal; and
 - (b) use its reasonable endeavours to indicate what amendment to the application would address its reasons for refusing the application including any alternative response to the Operational Event to that proposed in the application.
 - 4.9.4 The Independent Panels decision shall be made having regard to the matters listed at paragraph 4.7.3 and paragraph 4.11 will apply.
- 4.10 Upon receipt of a decision of the Independent Panel under paragraph **4.9** that grants approval subject to conditions or recommends an alternative solution to that proposed in the Derogation Request Form the Undertaker will either:
- 4.10.1 accept the decision of the Independent Panel to grant the approval subject to conditions; or

4.10.2 in the event the Independent Panel recommends an alternative solution it may hold a review workshop with the Relevant Authority at which the Undertaker and the Relevant Authority shall use their reasonable endeavours to agree:

- (a) how the Derogation should be implemented having regard to the requirements of paragraph 1.2 and the Independent Panels decision; and
- (b) whether the implementation of the Derogation should be the subject of on-going review;

and the decision of the workshop will be recorded on the Derogation Decision Notice to be prepared by the Undertaker and agreed with the Relevant Authority.

4.11 The decision of the Relevant Local Authority under paragraph **4.7** or the Independent Panel under paragraph **4.9** or a decision arising from a workshop held further to paragraph 4.10.2 and reasons for the decision shall be recorded on the Derogation Decision Notice which shall be provided to:

4.11.1 the Contractor;

4.11.2 the Undertaker;

4.11.3 the members of the Relevant Authority; and

4.11.4 any other stakeholder who should be notified of the Derogation further to the SFTP for the Main Tunnel Drive Site or Foreshore Site to which the Derogation applies.

4.12 If on the date specified for determination of the Derogation in Box 12 of the Derogation Request Form:

4.12.1 the Relevant Local Authority has not issued its decision in respect of the Operational Derogation for which approval is sought under paragraph 4.7; or

4.12.2 the Independent Panel has not issued its decision in respect of the Operational Derogation for which approval is sought under paragraph 4.9,

then provided that:

(a) the Undertaker has complied with its actions under paragraph 2 and paragraph 4; and

(b) is proposing to include a process for reviewing the acceptability of the continued operation of the Operational Derogation in any decision by the Undertaker to approve the application for the Operational Derogation,

the Undertaker may approve the Operational Derogation in which case paragraph 3.5 (in so far as it is applicable) and paragraph 3.6 shall apply, and

4.12.3 the Undertaker will immediately notify its decision to the individual members of the Relevant Authority for their review further to paragraph 3.6.2.

4.13 The Undertaker shall include the Derogation Event Notification Form, the Derogation Request Form and the Derogation Decision Notice in respect of any Operational Derogation approved further to paragraph **4.7**, paragraph **4.9**, and paragraph **4.10.2** or paragraph **4.12** in the Regular Report.

4.14 The Contractor shall only implement the Derogation as approved by the Relevant Local Authority, the Independent Panel or the Undertaker (as appropriate).

5 **Sustainability Derogations**

5.1 Subject to paragraph **5.2** to paragraph **5.5** Sustainability Derogations will be notified under the Derogation Notification Process described in paragraph 2 and an application for a Sustainability Derogation shall be determined further to the Unforeseen Derogations process described in paragraph **4**.

5.2 Paragraph **4.12** shall not apply to the approval of Sustainability Derogations.

5.3 In the event that the Relevant Local Authority refuses the application for a Sustainability Derogation under paragraph **4.7**, the Undertaker may refer that decision to refuse the Sustainability Derogation to the Independent Panel. The reference will be deemed to have occurred under paragraph **4.8** and paragraph **4.9** shall apply to the determination of the referral made further to this paragraph.

5.4 Notwithstanding the provisions of this paragraph **5** a Contingency Plan included in a SFTP approved further to paragraph **2.6** of **Schedule 3** (*Sustainable Freight Transport*) may provide for a Sustainability Derogation in circumstances defined within the Contingency Plan and the determination of an application for a Sustainability Derogation included in a Contingency Plan shall be determined further to the Contingency Derogation process in paragraph **3** (and references in that paragraph **3** to "Operational Derogations" shall be read as references to "Sustainability Derogations").

5.5 The provisions of this paragraph shall not apply in respect of:

5.5.1 the River Freight Activities described at sections 4.1.1(a), 4.1.1(b), 4.1.1(f) and 4.1.1(g) that are conducted to and from the Main Tunnel Drive Site at Chambers Wharf; or

5.5.2 the restriction on the loading, unloading and movement of barges or vessels at Chambers Wharf at section 4.1.2.

5.6 The Specified Materials covered by any approved Sustainability Derogation shall not be taken into account in the assessment of compliance with section **4.1.1** of the Strategy and the Objective.

Schedule 5
Monitoring and Reporting Protocol

- 1 **PRINCIPLES UNDERLYING THE MONITORING AND REPORTING PROTOCOL**
- 1.1 The Objective and compliance with the commitments at section 4.1.1 shall be monitored:
 - 1.1.1 by reference to the tonnage of materials moved further to the River Freight Activities;
 - 1.1.2 cumulatively across all River Freight Activities;
 - 1.1.3 over all the Main Tunnel Drive Sites and the Foreshore Sites;
 - 1.1.4 over the whole duration of construction of the Development; and
- 1.2 having regard to the Regular Monitoring and Annual Monitoring Reports.
- 2 **Regular Monitoring Report**
- 2.1 Following Implementation of the Development at each Main Tunnel Drive Site and Foreshore Site each of the Contractors shall prepare the Regular Monitoring Report for that Main Tunnel Drive Site or Foreshore Sites.
- 2.2 The Regular Monitoring Report shall contain the following information:
 - 2.2.1 the monthly and cumulative tonnage of the individual Specified Materials transported further to the River Freight Activities and the tonnage of Specified Materials transported by road for the Main Tunnel Drive Sites and the Foreshore Sites in their Contract Areas;
 - 2.2.2 the number of barge / vessels and HGV movements for each Main Tunnel Drive Site and Foreshore Site on a monthly and cumulative basis;
 - 2.2.3 forecasts of the predicted future tonnage of Specified Materials to be transported under the River Freight Activities and the programmed tonnage of Specified Materials to be transported by road having regard to likely, potential or actual Derogations for each of the Main Tunnel Drive Sites and the Foreshore Sites in their Contract Areas until completion of construction of the Development on the Main Tunnel Drive Sites and Foreshore Sites within the Contract Area;
 - 2.2.4 copies of all Derogation Event Notification Forms and Derogation Request Forms submitted and Derogation Decision Notices issued in the month prior to the Regular Report;
 - 2.2.5 an assessment of the performance of the SFTP against the Objective and the Strategy;
 - 2.2.6 information concerning compliance with any Remedial Actions Plans;
 - 2.2.7 records of continuing stakeholder engagement.

2.3 The Undertaker will collate the Regular Monitoring Reports prepared by the Contractor and will submit them to the individual members of Relevant Authority and the Independent Panel.

3 **Monitoring Meetings**

3.1 The Undertaker will arrange the Monitoring Meetings the first of which will be held not less than 3 months before the anticipated date on which Implementation of the Development will occur.

3.2 The following people and organisations will be invited to attend the Monitoring Meetings:

3.2.1 the Undertaker;

3.2.2 the Contractors;

3.2.3 the Relevant Authority; and

3.2.4 any other stakeholder identified in the SFTPs for the Main Tunnel Drive Site or Foreshore Site.

3.3 The purpose of the Monitoring Meeting is:

3.3.1 to review the Regular Monitoring Reports issued since the previous monitoring meeting;

3.3.2 to carry out a retrospective review of the need and reasonableness of Derogations approved by the Undertaker or the Relevant Authority or the Independent Panel during the month which is the subject of the Regular Monitoring Report or more generally;

3.3.3 to draw out lessons learned and make recommendations for revisions to Contingency Plans contained in the SFTPs and if recommendations are agreed by the Undertaker and the Relevant Authority paragraph 2.6 of Schedule 3 (*Sustainable Freight Transport*) shall apply;

3.3.4 to review upcoming Derogations as notified by the Contractors and / or confirmed by the Undertaker and determine outstanding Derogations in respect of which Derogation Request Forms have been submitted to the Relevant Authority;

3.3.5 to review the forecast performance of the Strategy against the Objective;

3.3.6 in the event of concerns about the effective implementation of the Strategy arising from the Regular Monitoring Reports or generally, or about the need for and reasonableness of Derogations that are being proposed (including timescales for decision making and frequency with which Derogations are being approved by the Undertaker or being applied for to the Relevant Authority) or that have been approved, to discuss the need for the preparation of Remedial Actions Plans.

4 **Annual Monitoring Report**

4.1 On each anniversary of the Implementation of the Development the Undertaker will provide the Annual Monitoring Report to the Relevant Authority.

4.2 The Annual Monitoring Report will:

- 4.2.1 contain the same information as the Regular Monitoring Report but it will be presented on an annualised basis; and
- 4.2.2 review all Contingency Plans and Derogations to establish improvements that can be made to the Contingency Plans and the Derogation processes set out with the Strategy.

Schedule 6 Remedial Action Plans

1 IF HAVING REGARD TO:

1.1 the Derogations,

1.1.1 it is being notified of under paragraph 2, paragraph 3.6 or paragraph 4.12.3 of Schedule 4 (*Derogations Process*);

1.1.2 it is being asked to determine under paragraph 4.7 of Schedule 4; or

1.2 the Regular Monitoring and Annual Monitoring Reports; and

1.3 discussions at the Monitoring Meetings,

the Relevant Authority reasonably considers that:

1.3.1 there is a pattern and practice of Derogations being approved that are unnecessary and / or unreasonable or that are not in compliance with paragraph 1(3) of Schedule 3 of the Draft DCO; or

1.3.2 that the Strategy is being implemented in a way that may frustrate the attainment of the Objective,

it may at any time require in writing the Undertaker to prepare a Remedial Action Plan and in imposing that requirement the Relevant Authority will identify the issues and matters the Remedial Action Plan is required to address or rectify further to paragraph 2.

2 A Remedial Action Plan will identify measures to address the short comings identified by the Relevant Authority including:

2.1 measures to address any failure to implement appropriate health and safety, equipment maintenance, construction site maintenance and management processes and procedures to prevent the need for Operational Derogations;

2.2 measures to mitigate the effects of any approved Derogation including traffic management, adherence to working hours, or permitted hours for HGV movements, use of approved HGV holding areas or other traffic management measures set out in the approved traffic management plan for a Main Tunnel Drive Site or Foreshore Site, including stakeholder engagement (including provision of timely and/or accurate information relating to Derogations);

2.3 measures to ensure Derogations are approved and implemented only when necessary and reasonable;

2.4 measures to improve the decision making surrounding Operational Derogations by the Contractor, the Undertaker and the Relevant Authority including ensuring appropriate timescales are proposed for decision making;

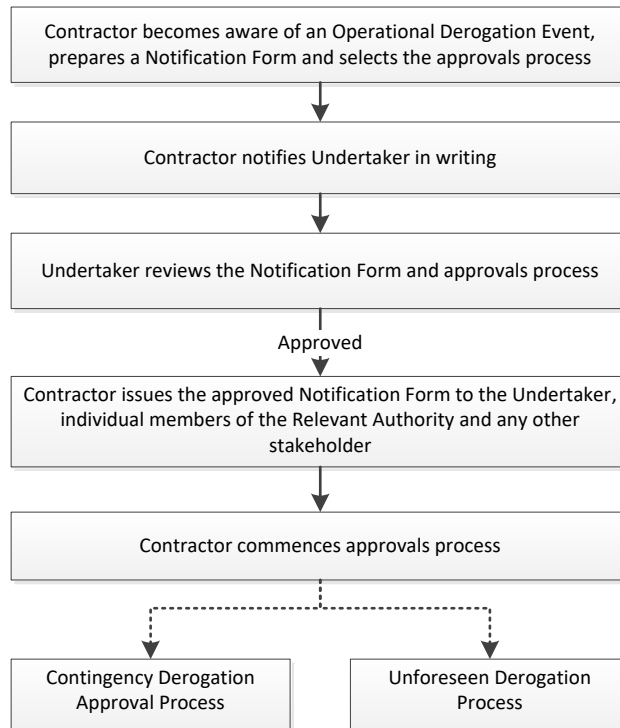
2.5 the circumstances in which the Remedial Action Plan will be deemed to have been complied with.

- 3 The Remedial Action Plan will be prepared by the Contractor and approved by the Undertaker after which the Remedial Action Plan will be submitted to the Relevant Local Authority for approval
- 4 The Relevant Local Authority will determine whether the Remedial Action Plan is agreed taking account of guidance received from the other members of the Relevant Authority. The decision will be notified to the Undertaker and the Contractor in writing.
- 5 If the Undertaker disagrees with the terms of a Remedial Action Plan approved by the Relevant Local Authority it may refer the Remedial Action Plan to the Independent Panel for their determination as to whether the Remedial Action Plan is necessary and reasonable having regard to the matters specified at paragraphs **1.1**, **1.2** and 1.3 and paragraph **1.2** of **Schedule 4** (*Derogations Process*).

Schedule 7
Completion Review

- 1 **THE COMPLETION REVIEW SHALL ASSESS:**
 - 1.1 whether the Development has been completed in accordance with the terms of the Strategy;
 - 1.2 whether the Objective was met; and
 - 1.3 the benefit that other major infrastructure projects of similar scale and complexity to the Thames Tideway Tunnel may gain from studying the experience of implementing the Strategy.
- 2 Within 3 months of completion of construction of the Development on the Main Tunnel Drive Sites and the Foreshore Sites the Undertaker shall prepare (in consultation with the Relevant Authority) and issue the Completion Review to the Relevant Local Authorities, the Greater London Authority, Transport for London and the Port of London Authority for comment and approval.
- 3 The Completion Review shall be submitted to the Independent Panel for review and will be amended in line with their recommendations.

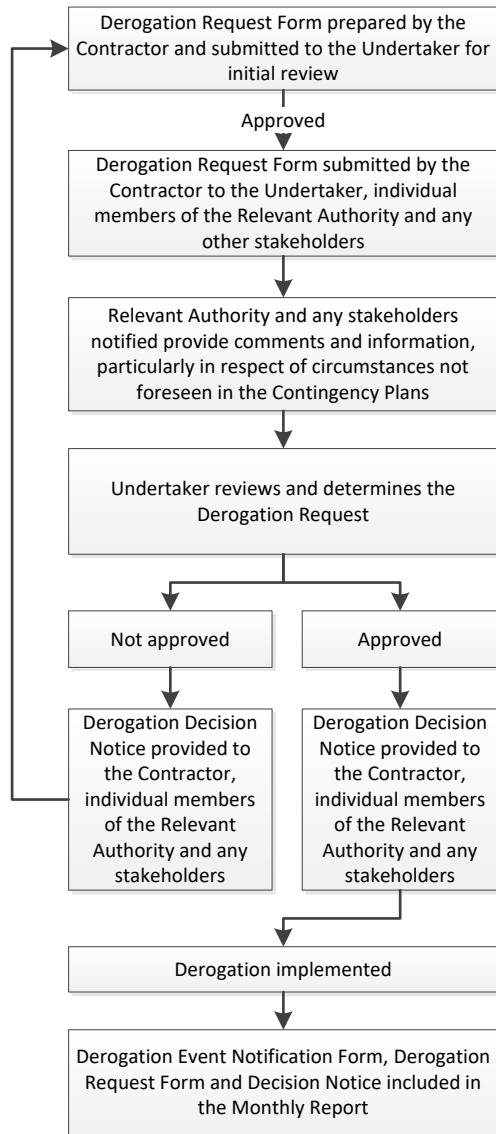
Appendix 1
Flow chart showing the derogation notification process



Appendix 2
Derogation event notification form

#	Question	Response
1.	Describe the derogation event	[description of event in as much detail as possible]
2.	Please insert the date/time of the derogation event	[date/ time]
3.	Is the derogation event covered by a contingency plan?	Yes
		No
4.	What are the likely effects of the derogation event on the execution of the project?	[please include a high-level description, covering the effects on construction, operation, health and safety, and the environment]
5.	What is the initial assessment of required response to the derogation request?	Mitigation required
		Derogation required
6.	What is the initial assessment of residual effects on local roads (taking into account any mitigation proposed)?	[please describe]
7.	Select derogations approval process	Contingency derogation approvals process
		Unforeseen derogation approvals process
8.	List of stakeholders relevant to derogation event	[please provide list]
9.	Please set out suggested timescales for approval	[please provide suggested timescales for Undertaker, Relevant Authority, and Independent Panel approval processes]
10.	Status of derogation notification	Submitted to Undertaker
		Decision by Undertaker
		Issued to the Undertaker, individual members of the Relevant Authority, and any other stakeholders

Appendix 3
Flow chart showing the contingency derogation approval process



Appendix 4
Derogation request form

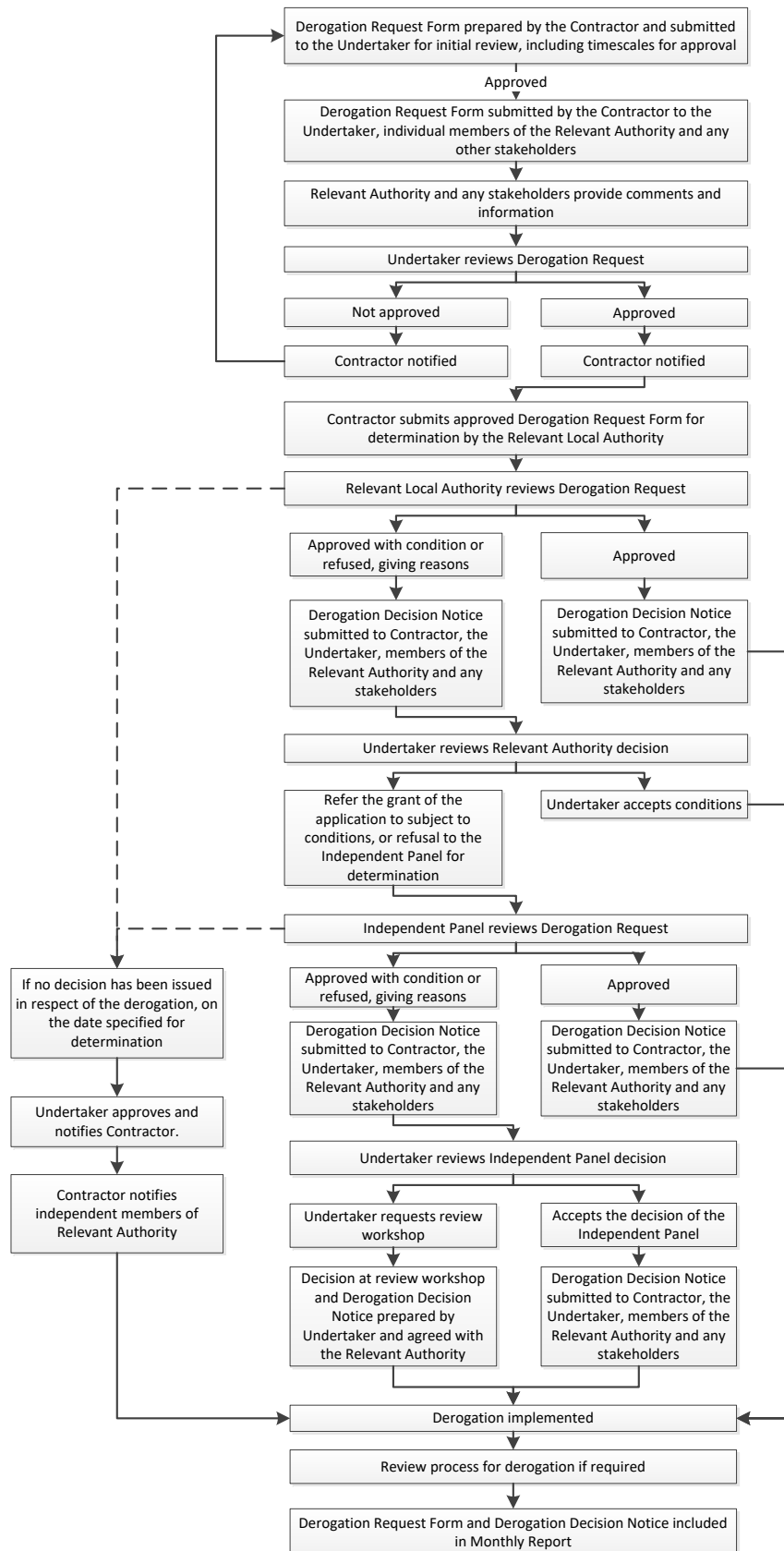
#	Question		Response
1.	Describe the derogation event, and identify whether it is a: a. Contingency Derogation b. Unforeseen Derogation c. Sustainability Derogation		[please include a description of the event or refer to contingency plan reference where appropriate. If event is related to a sustainability derogation, please include justification]
2.	Proposed duration of derogation?		[insert date from to date to]
3.	Describe the likely effects of the derogation event		[describe the effects, covering construction, operation, health and safety, and the environment]
4.	Describe the proposed mitigation measures		[please describe the mitigation required and how it will reduce the impact of, or remove the need for, the derogation event]
5.	If event relates to operational derogation, is derogation still required?	Yes	[select appropriate answer]
		No	
6.	Proposed derogation requirements		[please provide a detailed breakdown of the derogation, including total tonnage for sustainability derogations]
7.	Are any approvals required?		[please state any approvals required in addition to those included in the derogations process]
8.	Management requirements of derogation proposed		[please provide a breakdown of how the derogation will be managed]
9.	Longer term considerations of derogations and derogations proposed.		[please summarise any longer term implications of the event or derogations proposed]
10.	Relevant Authority phasing and review process for proposed derogation (if required)		[please propose timescales and details of the review process to be undertaken by the Relevant Authority]
11.	List of stakeholders to be notified of derogation		[only complete if this differs from the list provided in the derogation event notification form]
12.	Please set out required timescales for approval		[please provide required timescales for Employer, Relevant Authority, and Independent Panel approval processes]
13.	Status of derogation request (only complete sections where applicable)	Issued to Undertaker	[Date]
		Issued to Relevant Authority	[Date]
		Issued to Independent Panel	[Date]

**Appendix 5
Derogation decision notice**

#	Question	Response	
1.	Decision notice submitted by:	[note name of person who completed the form and role, e.g., Undertaker, Relevant Authority, Independent Panel]	
2.	Is the requested derogation necessary?	Yes	[please provide details]
		No	[please provide details]
		If no, alternative mitigation suggested?	[option to provide details of alternative mitigation proposed]
3.	Is the requested derogation reasonable?	Yes	[please provide details]
		No	[please provide details]
		If no, measures to avoid future similar recurrences?	[option to provide details of proposed measures]
4.	If a review process is proposed, is this approved?	Yes	[please provide details]
		No	[please provide details]
		If no, what review process should the Undertaker/contractor adhere to?	[please provide details of suggested review process]
5.	Derogation determination	Approve	[select appropriate answer]
		Approve with conditions	
		Refuse	
		Details of decision	[in the case of approve with conditions or refusal, please provide details of the rationale]

Appendix 6

Flow chart showing unforeseen derogation and sustainability derogation approval process



Required Reviewers & Approvers

Role	Name	Outcome	Date
Reviewer	James Spikesley	Approved	19/04/2023
Reviewer	Celia Carlisle	Approved	19/04/2023
Approver	Liz Wood-Griffiths	Approved	24/04/2023

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