

## **Richborough Connection Draft Development Consent Order**

### **Protective Provisions for the benefit of South East Water Limited**

#### Schedule 14

#### Protective Provisions

#### PART 5

#### PROTECTION FOR SOUTH EAST WATER LIMITED

##### A. General

45. The following provisions of this Part have effect unless otherwise agreed in writing between the undertaker and South East Water Limited.

46. In this Part

"SEW" means South East Water Limited (company number 02679874) and any associated company of South East Water Limited which holds an interest in the apparatus and any successor company or body carrying on the functions of a regulated water supply company in Kent which holds an interest in the apparatus; and for the purpose of the function of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of South East Water Limited or a subsidiary of South East Water Limited;

"alternative apparatus" means any temporary or permanent alternative apparatus adequate to enable SEW to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means mains, pipes or other water apparatus belonging to or maintained by SEW for the purposes of water supply and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties; and

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

47. Part 5A of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and SEW are regulated by the provisions of Part 3 of the 1991 Act.

48. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

49. (1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, (a) that apparatus must not be removed or diverted from its position under this Part of this Schedule and/or (b) any right of SEW to retain and maintain that apparatus in that land must not be extinguished or made permanently or for any longer than 7 consecutive days incapable of being exercised until:

(a) any alternative apparatus required has been constructed and is in operation to the reasonable satisfaction of SEW; and

(b) any rights required by SEW (acting reasonably) including to install, access, retain, replace, divert and maintain any diverted apparatus or alternative apparatus have been secured to the reasonable satisfaction of SEW.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires SEW to remove or divert any apparatus placed in that land the undertaker must give to SEW written notice of that requirement, together with a plan and section of the work proposed for approval (such approval not to be unreasonably withheld).

(3) If alternative apparatus is to be constructed as a consequence of the removal or diversion of apparatus placed, or any part of such apparatus, on the land referred to in sub-paragraph (2), SEW, must on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible, use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) SEW must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 49 (arbitration), and after the grant to SEW of any such facilities and rights as are referred to in sub-paragraphs (1) (b) and (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule being met and SEW having secured any rights necessary to carry out such a removal, diversion or other alteration.

(5) Regardless of anything in sub-paragraph (4) but subject to the conditions in sub-paragraphs (1)(a) and (b), if the undertaker gives notice in writing to SEW that it desires itself to execute any work, or part of any work in connection with the removal or diversion of apparatus or the construction of alternative apparatus, that work, instead of being executed by SEW, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of SEW. The undertaker will use reasonable endeavours to carry out such work in such manner as to cause as little damage and disruption as possible to SEW. If so requested by SEW, where possible, the undertaker will return any removed apparatus to SEW.

(6) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of retained apparatus.

50. (1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to or will or may affect any retained apparatus, the undertaker must submit to SEW a plan, section and description of the works to be executed in order to ensure the protection of retained apparatus.

(2) The works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by SEW for the alteration or otherwise for the protection of retained apparatus or for securing access to such retained apparatus and SEW is entitled to watch and inspect the execution of those works.

(3) Any requirements made by SEW under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it, or as soon as reasonably practicable after SEW becoming aware of an issue (which it

was not aware of at the time the plan, section and description under sub-paragraph (1) was submitted), which means a requirement(s) is now necessary to protect the retained apparatus and or access to the retained apparatus.

(4) If SEW in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 45 to 48 apply as if the removal of the apparatus had been required by the undertaker under paragraph 49(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to SEW notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

51.(1) Subject to the following provisions of this paragraph, the undertaker must repay to SEW the proper and reasonable expenses reasonably incurred by SEW in, or in connection with, the consideration and approval of plans, inspection, installation, removal, diversion, alteration or protection of any apparatus, retained apparatus or alternative apparatus and the reasonable costs of securing any rights which SEW requires (acting reasonably) in relation to the apparatus or alternative apparatus including to install, access, retain, replace, divert, alter and maintain that apparatus or alternative apparatus.

(2) The value of any apparatus removed by SEW or returned to SEW after removal by the undertaker is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal by the undertaker (who will provide reasonable evidence of such value to SEW if so requested).

(3) If in accordance with the provisions of this Part of this Schedule:

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or alternative apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to SEW by virtue of sub-paragraph (1) is to be reduced by the amount of that excess, the value of that excess being calculated by the undertaker (who will provide reasonable evidence of such value to SEW if so requested).

(4) For the purposes of sub-paragraph (3)

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and



55. Despite any provision of this Order or anything shown on the Land Plans or contained in the Book of Reference the undertaker must not exercise any right contained in paragraph (e) of the Description of Rights contained in Class 1 of the Book of Reference in respect of SEW's land in such a manner as to prevent the reasonable carrying out of the Broad Oak Preparatory Works and / or the Broad Oak Construction Works and the reasonable operation and maintenance of the Broad Oak Reservoir provided that SEW, the landowner, must not do or suffer anything to be done on SEW's land that may interfere with or cause damage to the authorised development or interfere with the undertaker's reasonable access to the authorised development including, without limitation, impose clearance restrictions to the authorised development, or erect any building or structure.

56. Pylons PC8, PC9, and PC10 will be sited with a 5 metre tolerance in the positions shown on drawings [Note: Drawings to include the Design Drawings and the drawings submitted at Deadline 6 for the options 2-7].

57. Notwithstanding any provision in this Order no part of the authorised development comprising a conductor may be constructed or installed on or over any part of SEW's land at a level which is more than 50 centimetres lower than the level of that conductor as shown on the design drawings.

58. Notwithstanding requirements 8 and 9 the undertaker shall not less than 56 days before starting the execution of any landscaping and mitigation planting works submit to SEW a plan and description of the landscaping and mitigation planting works and shall where reasonably practicable execute such works in accordance with such reasonable requirements as may be made by SEW.

59. Notwithstanding any provision of this Order the undertaker shall not exercise any right or power under this Order to prevent SEW from reasonably carrying out the Broad Oak Reservoir Preparatory Works, the Broad Oak Reservoir Construction Works or from operating the Broad Oak Reservoir within SEW's land except where reasonably required in relation to the construction, operation and maintenance of the authorised development, including for reasons of health and safety.

60. The undertaker shall not exercise any right or power under this Order to prevent SEW from reasonably implementing the Scheme for Habitat Creation and Management within SEW's land except where reasonably required in relation to the construction, operation and maintenance of the authorised development, including for reasons of health and safety.

61. In the event that it is a condition of SEW's planning permission or other statutory consent for the Broad Oak Reservoir that the fitting of bird flight diverters is required, the undertaker must, at the cost of SEW, fit and maintain bird flight diverters to the overhead lines between Pylons PC8 and PC9 and Pylons PC9 and PC10.