

## 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.

46. In this Part

"SEW" means South East Water Limited (company number 02679874) and any associated company of South East Water Limited and any successor company or body carrying on the functions of a regulated water supply company in Kent

"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 that water undertaker 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;

"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; and

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 days incapable of being exercised or significantly more difficult to exercise 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, SEW will not be obligated to do so until it is satisfied that the conditions of sub-paragraphs (1) (a) and (b) have, or will be, met and the undertaker has given 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 subparagraphs (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 its best 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 apparatus within 300 millimetres of any apparatus the removal or diversion of which has not been required by the undertaker under paragraph 5 (2) (retained 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 1 to 4 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(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. Such repayment to be made within 28 days of demand by SEW.

(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 significantly greater depth 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 apparatus placed 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

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which, apart from this sub-paragraph, would be payable to SEW in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on SEW any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit, the value of which being calculated by SEW (who will provide reasonable evidence of such value if so requested).

52. If any damage to any apparatus or any property containing apparatus is caused by, or results from, any work authorised by this Order or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon such work, the undertaker must make good such damage to the reasonable satisfaction of SEW and or make a payment of compensation to SEW including in such a compensation payment the cost of any fines or compensation SEW incurs due to any inability to carry out its statutory functions.

53. The undertaker must pay to SEW all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 48 (no double recovery)) which may be occasioned to or reasonably incurred by SEW

(a) by reason of the construction or maintenance of any works authorised by this Order or the failure thereof; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged in carrying out any works authorised by this Order;

(c) the undertaker must indemnify and keep indemnified SEW against all claims and demands arising out of or in connection with any works authorised by this Order or any such failure, act or omission

Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of SEW or its servants, contractors or agents or any liability on SEW with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

54. The undertaker must not in the exercise of the powers conferred by this Order permanently or for any longer that 7 days prevent pedestrian or vehicular access to any apparatus or alternative apparatus, unless preventing such access is with the consent of SEW.

#### B. For the benefit of the proposed Broad Oak Reservoir

55. In this Part 5B

"Broad Oak Reservoir" means a reservoir in the vicinity of the village of Broad Oak in Kent proposed by SEW.

"Broad Oak Reservoir Construction Works" means works to be carried out by or on behalf of SEW for the construction of the Broad Oak Reservoir including without limitation works to construct the dam

structure, to dig and flood the reservoir, all works required in connection with the Scheme for Habitat Creation and Management, access and egress on foot and with vehicles.

"Broad Oak Reservoir Preparatory Works" means works to be carried out by or on behalf of SEW in connection with the construction of the Broad Oak Reservoir including without limitation the drilling of boreholes, the digging of test pits, the carrying out of geomorphological surveys, the digging of trenches, the creation of a river channel, the removal and planting of trees, woodlands, shrubs and other vegetation and access and egress on foot and with vehicles

"conductor" means a conductor or part of a conductor being part of any 400kV overhead electrical line forming part of the authorised development

"pylon" means any pylon forming part of the authorised development and including its foundations and the safety clearance zone around it.

"RCP safety requirements" means climbable trees remaining 5.3 meters below the conductor and remaining [ ] meters away from pylons and coppiced trees remaining 3.1 meters below the conductor and remaining [ ] meters away from pylons **[The Applicant to please confirm definition and minimum clearances required]**

"Scheme for Habitat Creation and Management" means a scheme for the creation of new habitat including the diversion of the Sarre Penn River, the creation of a fish pass and new habitat required to enable the construction of the Broad Oak Reservoir which scheme has been approved by the relevant planning authority

"SEW's land" means Plot Numbers 356, 358, 359, 360, 361, 362, 363, 364, 365, 366, 368, 369, 370, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 386, 387, 388, 391, 392, 393 and 419.

56. Unless expressly provided otherwise in this Part the undertaker must not exercise the powers conferred by—

- (a) Article 10 - Street works
- (b) Article 12 - Power to alter layout etc. of streets
- (c) Article 13 - Temporary stopping up of streets and public rights of way
- (d) Article 14 - Access to works
- (e) Article 16 - Discharge of water
- (f) Article 17 - Protective work to buildings
- (g) Article 18 - Authority to survey and investigate the land
- (h) Article 21 - Compulsory acquisition of rights
- (i) Article 23 - Extinguishment and suspension of private rights
- (j) Article 26 - Acquisition of subsoil or air-space only
- (k) Article 27 - Rights under or over streets
- (l) Article 28 - Temporary use of land by National Grid

- (m) Article 29 - Temporary use of land by UK Power Networks
- (n) Article 30 - Temporary use of land for maintaining the authorised development
- (o) Article 39 - Traffic Regulation
- (p) Article 40 - Felling or lopping of trees
- (q) Article 41 - Trees subject to tree preservation orders

in respect of SEW's land unless the exercise of such powers is with the consent of SEW.

57. No pylon shall be located within the area shown edged red on the Broad Oak Reservoir Pylon Exclusion Zone Plan (Document [ ])

58. 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.

59. Notwithstanding requirements 8 and 9 no landscaping and mitigation planting works shall be carried out on SEW's land unless the planting scheme described by requirement 8(1) has first been submitted to SEW for approval and approved by SEW.

60. Notwithstanding any provision of this Order the undertaker shall not exercise any right or power under this Order to inhibit SEW from 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 that the undertaker may fell and lop trees and any other vegetation if necessary to ensure compliance with the RCP safety requirements and if the undertaker does exercise powers under the Order to carry out such lopping or felling it shall do so in accordance with a felling and lopping scheme which shall first have been agreed with SEW and so as to cause as little disruption to planting and vegetation on SEW's land as possible.

61. The undertaker shall not exercise any right or power under this Order to inhibit SEW from implementing the Scheme for Habitat Creation and Management within SEW's land except to ensure compliance at all times with the RCP safety requirements and in doing so will carry out the minimum lopping or felling necessary and cause as little disruption to planting and vegetation on SEW's land as possible.

62. The undertaker must fit and maintain bird flight diverters to the overhead lines between Pylons PC8 and PC9 and Pylons PC9 and PC10 following the implementation of planning permission or other statutory consent for the Broad Oak Reservoir unless the relevant planning authority confirms in writing that the fitting of bird flight diverters is not required.

63. The undertaker shall if requested in writing by SEW in connection with the construction of the Broad Oak Reservoir isolate a conductor or conductors for such period as reasonably required by SEW.