

**From:** [Gordon, Clark](#)  
**To:** [Southampton to London Pipeline Project](#)  
**Cc:** [Newman, Steve](#)  
**Subject:** Environment Agency update to BEIS SoS - SLP Project (EN070005)  
**Date:** 17 September 2020 17:16:08  
**Attachments:** [image006.png](#)  
[Environment Agency update to BEIS SoS - SLP Project \(EN070005\).pdf](#)  
[Draft updated Environment Agency Protective Provision \(track-changes\).pdf](#)

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Dear Sir/Madam,

**Environment Agency update to Business, Energy & Industrial Strategy Secretary of State (EN070005)**

**PINS Registration identification number: 20022740**

Please find attached an update for the BEIS SoS on the EA's River Thames Scheme, further to our letter dated 19 August. We have also attached an updated Protective Provision, which is referenced in the letter.

If you have any queries about this response, please do not hesitate to contact me.

Kind regards,

**Clark Gordon**

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## PART 4

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

40. The following provisions of this Part of this Schedule apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

41. In this part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” must be construed accordingly;

“Cove Brook Flood Storage Area” means trenchless crossing TC014a as shown on sheet 34 of the General Arrangement Plans;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“the fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the channel;

“plans” includes sections, drawings, specifications, calculations and method statements;

[“River Thames Flood Alleviation Scheme” includes a flood relief channel in one or more sections between Egham Hythe and Shepperton linking existing lakes;](#)

[“RTS land” means the land proposed for the River Thames Flood Alleviation Scheme and forming part of plots \[1823, 1830, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1846, 1847, 1848, 1849 and 1851\] shown on the land plans;](#)

“specified work” means the conduct of any construction or maintenance activity authorised by this Order as is:

(1) in, on, under, over or within 8 metres of a main river or the Cove Brook Flood Storage Area and is otherwise likely to—

(a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;

(c) cause obstruction to the free passage of fish or damage to any fishery;

(d) affect the conservation, distribution or use of water resources; or

(e) affect the conservation value of the main river and habitats in its immediate vicinity; or

(e) (2) [in, on, under or over the RTS land;](#)

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, river basins, sewers and passages through which water flows except a public sewer.

42.—(1) Before beginning to construct any specified work the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 51.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed and the Agency will provide regular updates on its consideration of the requested approval and including timely notice of any potential refusal or delay to its determination;

(b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been

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requested by the Agency for approval in which case the Agency must provide a statement of the grounds of refusal or delay as soon as possible after such deemed refusal; and

- (c) may be given subject to such reasonable requirements as the Agency may have (taking account of the terms of this Order) and which are for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties or for the protection of or to facilitate the River Thames Flood Alleviation Scheme.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

43. Without limiting paragraph 42 and subject to paragraph 44, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to

~~(1)~~ (1) construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary (taking account of the terms of this Order)—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work.

~~(2)~~ (2) construct the specified work at a specified depth below the surface of the ground or in a specified location as required by the Agency in order to protect or facilitate the River Thames Flood Alleviation Scheme and if required by the Agency the undertaker must apply to the Secretary of State for any certification that may be necessary under article 6(2).

~~43-44.~~ (1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 43, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency will be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule or, as the case may be, the standard rules, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6), if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (4) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure reasonably incurred by the Agency in so doing will be recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 51.

~~44-45.~~ (1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works ensure that any drainage work which is situated within the

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limits of deviation and on land held or occupied by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence, is maintained in good repair and condition and free from obstruction, for the duration of the conduct of the specified works.

(2) If any such drainage work which the undertaker is liable to maintain, by virtue of sub-paragraph (1) above, is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5) and paragraph 49, if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any expenditure incurred by the Agency in so doing will be recoverable from the Applicant.

(4) If there is any failure by the Applicant to obtain consent or comply with conditions imposed by the Agency in accordance with these Protective Provisions the Agency may serve written notice requiring the Applicant to cease all or part of the specified works and the Applicant must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 51.

(6) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

**45-46.** Subject to paragraph 49, if by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the Applicant to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure reasonably incurred by the Agency in so doing from the undertaker.

**46-47.** If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the Applicant must provide such alternative means of access (having regard to the terms of this Order and the nature of the undertaker's interest in land) that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of the Applicant becoming aware of such obstruction.

**47-48.—(1)** The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the Applicant requiring it to take such steps as may be reasonably practicable (taking account of the terms of this Order) to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Applicant fails

to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure reasonably incurred by the Agency in so doing will be recoverable from the Applicant.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Applicant any expenditure reasonably incurred in so doing provided that notice specifying those steps is served on the Applicant as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

**48.49.** The undertaker must repay to the Agency all reasonable costs, charges and expenses which the Agency may reasonably incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

**49.50.—(1)** The undertaker must make reasonable compensation for costs and losses which may be reasonably incurred or suffered by the Agency by reason of—

- (a) the construction of any specified works comprised within the works authorised by this Order; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction of the specified works.

(2) For the avoidance of doubt, in sub-paragraph (1)— “costs” includes—

- (a) expenses and charges;
- (b) staff costs and overheads;
- (c) legal costs;
- (d) “losses” includes physical damage.

(3) The undertaker must make reasonable compensation for liabilities, claims and demands arising out of or in connection with the specified works comprised within the works authorised by this Order or otherwise out of the matters referred to in sub-paragraph (1)(a) and (b).

(4) For the avoidance of doubt, in sub-paragraph (3)— “claims” and “demands” include as applicable—

- (a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;
- (b) any interest element of sums claimed or demanded; “liabilities” includes—
- (c) contractual liabilities;
- (d) tortious liabilities (including liabilities for negligence or nuisance);
- (e) liabilities to pay statutory compensation or for breach of statutory duty; and
- (f) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable notice of any such claim or demand.

(6) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(7) The Agency must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(8) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(9) The Agency must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.

(10) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, will not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

50.51. Any dispute arising between the undertaker and the Agency under this part of this Schedule must, if the parties agree, be determined by arbitration under article 48 (arbitration).

