

PART 5

FOR THE PROTECTION OF THURROCK COUNCIL (AS LEAD LOCAL FLOOD AUTHORITY)

49. The following provisions of this Part of this Schedule apply for the protection of Thurrock Council unless otherwise agreed between the Company and Thurrock Council.

50. In this Part of this Schedule—

“construction” includes execution, placing, altering, laying, replacing, relaying, connecting, building, installing, removal and excavation and “construct” and “constructed” are to be construed accordingly;

“drainage work” means an ordinary watercourse and includes any land which is expected to provide flood storage capacity for an ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse;

“ordinary watercourse” has the same meaning as given in section 72 (interpretation) of the Land Drainage Act 1991;

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

“specified work” means any of the following works carried out in relation to or which may affect any ordinary watercourse—

- (a) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;
- (b) construction or installation of a bridge or other structure;
- (c) installing a culvert in the watercourse; or
- (d) altering a watercourse or a culvert or other form of drainage infrastructure in a manner that would be likely to affect the flow of the watercourse.

51.—(1) Before beginning to construct any specified work, the Company must submit to Thurrock Council plans of the work, and such further particulars as Thurrock Council may within 28 days of receipt of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by Thurrock Council, or determined under paragraph 59.

(3) Thurrock Council must approve or refuse approval of the plans for a specified work within—

- (a) two months of receipt under sub-paragraph (1); or
- (b) two months of receipt of such further particulars as Thurrock Council may require under sub-paragraph (1).

(4) Any approval of Thurrock Council required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is to be deemed to have been given if it is neither given nor refused within 2 months of receipt of the plans for approval or where further particulars are received under sub-paragraph (1), within 2 months of receipt of those particulars; and
- (c) may be given subject to such reasonable requirements or conditions as Thurrock Council may make for the protection of any ordinary watercourse or for the prevention of flooding.

52. The requirements or conditions which Thurrock Council may make under paragraph 51 include conditions requiring the Company at its own expense to construct such protective works (including any new works as well as alterations to existing works) as are reasonably necessary—

- (a) to safeguard any ordinary watercourse against damage, or

- (b) to secure that the efficiency of any ordinary watercourse for flood defence or land drainage purposes is not impaired and that the risk of flooding is not otherwise increased, nor land drainage impaired,

by reason of the specified work.

53.—(1) Any specified work, and all protective works required by Thurrock Council under paragraph 51, must be constructed to the reasonable satisfaction of Thurrock Council and an officer of Thurrock Council is entitled on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works.

(2) The Company must give to Thurrock Council not less than 14 days' notice of its intention to commence construction of any specified work (except in the case of a specified work which is also a specified work for the purposes of Part 7 of this Schedule (for the protection of Thurrock Council (as highway authority)) or a specified work which directly affects an existing highway, in which case the Company must give not less than three months' notice) and the Company must give to Thurrock Council notice of completion of a specified work not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work in, over or under any ordinary watercourse is constructed otherwise than in accordance with the requirements of this Part of this Schedule, Thurrock Council may by notice require the Company at its own expense to comply with the requirements of this Part of this Schedule or (if the Company so elects and Thurrock Council in writing consents, such consent not to be unreasonably withheld) at the Company's expense 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 Thurrock Council reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the Company, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, Thurrock Council may execute the works specified in the notice and any expenditure reasonably incurred by it in so doing is to be recoverable from the Company.

(5) In the event of any dispute as to whether sub-paragraph (3) 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, Thurrock Council must not, except in an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

54.—(1) From the commencement of the construction of any specified work until the date falling 12 months from the date of completion of the specified work ("the maintenance period"), the Company must at its expense, maintain in good repair and condition and free from obstruction the drainage work which is situated within the limits of deviation for that specified work and within land held or occupied by the Company, whether the drainage work is constructed under this Order or is already in existence.

(2) If any such drainage work is not maintained to the reasonable satisfaction of Thurrock Council, it may by notice require the Company to maintain the drainage work at the Company's expense, or any part of it, to such extent as Thurrock Council reasonably requires.

(3) 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 Company, the Company has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, Thurrock Council may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), Thurrock Council must not except in a case of emergency exercise the powers of sub-paragraph (3) until the dispute has been finally determined.

55. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or

that watercourse is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the Company at its expense to the reasonable satisfaction of Thurrock Council and if the Company fails to do so, Thurrock Council may make good the same and recover from the Company the expense reasonably incurred by it in doing so.

56.—(1) The Company must indemnify Thurrock Council in respect of all losses, expenses, actions, liabilities, costs, charges, claims, demands, proceedings, damages and expenses which it may reasonably incur or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule; and
- (b) in the inspection and supervision of the construction of a specified work in respect of an ordinary watercourse or any protective works required Thurrock Council under this Part of this Schedule.

(2) The maximum amount payable to Thurrock Council under sub-paragraph (1)(a) or (1)(b) is to be the same as would have been payable to Thurrock Council in accordance with the scale of charges for pre-application advice and land drainage consent applications published on Thurrock Council's website from time to time.

57.—(1) Regardless of the other provisions of this Part of this Schedule, but subject to paragraph 56, the Company must, within 28 days of receiving written notification from Thurrock Council, indemnify Thurrock Council from all losses, expenses, actions, charges, costs, liabilities, claims, demands, proceedings or damages, which may be incurred, made or taken against, or recovered from Thurrock Council by reason of—

- (a) any damage to any ordinary watercourse so as to impair its efficiency for flood defence or land drainage purposes;
- (b) any raising or lowering of the water table in land adjoining or affected by a specified work or adjoining any sewers, drains and watercourses;
- (c) any flooding, increased flooding or impaired drainage of any such lands as are mentioned in paragraph (b) above;
- (d) any claim in respect of pollution under the 1974 Act;
- (e) damage to property including property owned by third parties; or
- (f) injury to or death of any person,

which is caused by, or results from, the construction and maintenance of any specified work or any act or omission of the Company, its contractors, agents or employees whilst engaged upon the specified work.

(2) Thurrock Council must give to the Company reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand is to be made without the consent of the Company which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

58. The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to have been approved by Thurrock Council, or to its satisfaction, does not (in the absence of negligence on the part of Thurrock Council, its officers, contractors or agents) relieve the Company from any liability under the provisions of this Part of this Schedule.

59. Any dispute arising between the Company and Thurrock Council under this Part of this Schedule is to be determined by arbitration in accordance with article 60 (arbitration) of the Order.