

Submission ID: S1476EF01

The attached document is the Water Management Alliance's preferred Protective Provisions, as agreed with the Applicant. The Protective Provisions are approved by Water Management Alliance subject to correction of paragraph numbering (final paragraph should be paragraph 11, not 12).

PART [●]

FOR THE PROTECTION OF DRAINAGE AUTHORITIES

Application

1. The provisions of this Part have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority. In the event that there is conflict between the terms of this Part of this Schedule and the Order, the terms of this Part of this Schedule shall prevail.

Interpretation

2. In this Part of this Schedule—

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

"drainage authority" means in relation to an ordinary watercourse, the drainage board or where no drainage board exists the local authority concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(a);

"drainage work" means any ordinary watercourse and includes any land that provides or is expected to provide flood storage capacity for any 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 meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within 9m of a drainage work or is otherwise likely to:

- a) affect any drainage works or the total volume or volumetric rate of flow of water in or flowing to or from any drainage works;
- b) affect the flow of water in any such drainage work;
- c) restrict access to any ordinary watercourse;
- d) restrict the ability of the drainage authority to spread spoils arising from ordinary watercourses within 9 metres of the landward toe of either side of the banks of the watercourse; or
- e) affect the conservation, distribution or use of water resources.

Approval of plans

3.—

(1) The undertaker must not make any opening into or connections with any watercourse or drain in connection with the authorised development or carry out any specified work except –

(a) in accordance with plans approved by the drainage authority in accordance with this Part of this Schedule or determined under paragraph [11 (disputes)]; and

(b) where the drainage authority has been given the opportunity to supervise the making of the opening or connection, or specified work

and no discharge of water under article 20 (discharge of water) shall be made until details of the location and maximum rate of discharge have been submitted to and approved in writing by the relevant drainage authority

(2) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may reasonably request within 28 days of the submission of the plans.

(3) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph [11 (Disputes)] and the timetable of works unless other timescales are agreed between the parties.

(4) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within two months of the later of :
 - (i) submission of the plans for approval under sub-paragraph (1);
 - (ii) submission of such further particulars as the drainage authority may reasonably require under sub-paragraph (2); or
 - (iii) submission of such further particulars as the undertaker may submit under sub-paragraph (6); or
 - (iv) in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work or for the prevention of flooding

(5) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal. Any refusal under this paragraph may be referred to a single arbiter in accordance with paragraph [11 (Disputes)].

(6) Nothing shall preclude the undertaker from submitting at any time or from time to time, in accordance with the timings required by this Part of this Schedule, a new plan, instead of a plan previously submitted, and having done so the provisions of this Part of this Schedule will apply to and in respect of the new plan.

(7) The undertaker will not be required to comply with this paragraph, or with sub-paragraphs 5(1) to (3) where it needs to carry out emergency works, but in that case it must give to the drainage authority notice as soon as is reasonably practicable with a plan of those works, and must comply with the provisions of this Part of this Schedule insofar as is reasonably practicable in the circumstances.

4. Without limiting paragraph 3, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct or contribute to the construction of such protective works (herein referred to as “protective works”), whether temporary or permanent, during the construction of the specified work (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 and the provision of any new temporary or permanent access arrangements required as a result of the specified work) as are reasonably necessary—

- (a) to safeguard any drainage work against damage or adverse impact by reason of any specified work; or
- (b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased, by reason of any specified work.
- (c) To ensure the protective works are constructed to an agreed time table.
- (d) To minimise the impact of the specified work on any designated sites of nature conservation.

Specified and protective works

5.—

(1) Subject to sub-paragraph (2), if commenced, any specified work, and all protective works required by the drainage authority under paragraph 4, must be constructed—

- (a) without unreasonable delay in accordance with the plans and timetable approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the drainage authority, and an officer of the drainage authority is entitled to watch and inspect the construction of such works at all reasonable times and on giving reasonable notice.

(2) The undertaker must give to the drainage authority—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work and any protective works; and
- (b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before commencing construction of the specified work to which the protective works relate.

(4) If any part of a specified work or any protective works required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, or as otherwise agreed between the undertaker and the drainage authority, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage authority 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 drainage authority reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 3, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice, subject to the undertaker having the right to supervise the planning and execution of such works to the extent they may affect the authorised development, and any reasonable expenditure incurred by the drainage authority in so doing is 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 drainage authority must not, except in an emergency or an imminent risk of flooding, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

Maintenance of drainage works

6.—

(1) Subject to sub-paragraph (5), the undertaker must 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") or the date that the undertaker ceases to occupy any land, whichever is later maintain in good repair and condition and free from obstruction any part of a drainage work which is situated within land held or occupied by the undertaker for the purpose of or in connection with the specified work, whether the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work which the undertaker is liable to maintain is not maintained during the maintenance period or the date that the undertaker ceases to occupy the land (whichever is later) to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker at the undertakers cost to repair and restore the drainage work, or any part of the drainage work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) Subject to sub-paragraph (4) and paragraphs 8 and 9 if, within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (2) is served on the undertaker, the undertaker 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, the drainage authority may do what is reasonably necessary for such compliance, subject to the undertaker having the right to supervise the planning and execution of such works to the extent they may affect the authorised development, and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not, except in a case of emergency or imminent risk of flooding, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing except for drainage work that is required to be repaired or maintained as a result of or in connection with the specified work.
- (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 of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

Expenses and indemnity

7. (1), If, by reason of any specified work or any protective works or of the failure of any such works the efficiency of any drainage work for flood defence and/or land drainage purposes is impaired, or that drainage work is otherwise damaged so as to require remedial action, such impairment or damage must be made good by the undertaker at its own expense as soon as reasonably practicable to the reasonable satisfaction of the drainage authority, and if the undertaker fails to do so the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

(2) If by reason of construction of the specified work or any protective works the drainage authority's access to land drainage infrastructure, flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the drainage authority to maintain the land drainage infrastructure, flood defence or use the equipment no less effectively than was possible before the obstruction within 48 hours of or as soon as reasonably practicable after the undertaker becomes aware of such obstruction.

8. The undertaker shall provide reasonable compensation to the drainage authority for the costs, charges and expenses which the drainage authority may reasonably and properly incur in—

- (a) the examination or approval of plans under this Part of this Schedule;
- (b) inspecting the proposed location of the specified work or any protective works, and the construction of a specified work or any protective works reasonably required by the drainage authority under this Part of this Schedule; and
- (c) subject at all times to receiving the prior written approval of the undertaker, carrying out any surveys or tests or assessments which are reasonably required in connection with the construction of the specified work or any protective works.

9.—

(1) Without limiting the other provisions of this Part, the undertaker must indemnify the drainage authority from all claims, demands, proceedings, costs, damages, expenses or loss not otherwise provided for in this Schedule, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work arising out of construction of the specified work, protective works or emergency works or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon any such works so as to impair the drainage authority to efficiently manage flood defence or water management or maintenance of drainage work;
- (b) any flooding or increased flooding of any such land which is caused by, or results from, the construction, operation, failure, removal or maintenance of the specified work or the protective works or the failure of any associated works or any act or omission of the undertaker, its contractors, agents or employees or others whilst engaged upon the

construction, operation, maintenance or removal of the specified work and protective works or while dealing with any failure of the same.

- (c) any reasonably foreseeable claims made against the drainage authority due to its inability to carry out its statutory functions or contractual obligations directly arising as a result of the carrying out of any specified work or any protective works.

The drainage authority must give to the undertaker reasonable notice of any claims, demands, proceedings, costs, damages, expenses or loss and save for any enforcement proceedings brought by a regulator no settlement or compromise may be made without the agreement of the undertaker, such agreement not to be unreasonably withheld or delayed.

(2) The drainage authority must at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or losses.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or loss to the extent that it is attributable to the act, neglect or default of the drainage authority, its officers, servants, contractors or agents.

(4) In no circumstances will the undertaker be liable to the relevant authority under or in connection with this Part of this Schedule for loss of profit.

10. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority or to its satisfaction or in accordance with any directions or award of an arbitrator does not (in the absence of negligence on the part of the drainage authority, its officers, contractors or agents), relieve the undertaker from any liability under this Part.

Disputes

12 . Any difference or dispute arising between the undertaker and the drainage authority under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the drainage authority, be determined by arbitration under article 62 (arbitration) of the Order save that the Secretary of State referred to in article 62 will be the Secretary of State for Environment Food and Rural Affairs or its successor and the Secretary of State for Energy Security and Net Zero or its successor acting jointly on reference to them by the undertaker or the drainage authority, after notice in writing by one to the other.