

**From:** [Gordon, Clark](#)  
**To:** [Southampton to London Pipeline Project](#)  
**Cc:** [Lines, Charlotte](#); [Rabone, Anna](#); [Boyden, Adam](#)  
**Subject:** Environment Agency (20022740) Representation for Southampton to London Pipeline Project (EN070005)  
**Date:** 14 November 2019 16:48:04  
**Attachments:** [image006.png](#)  
[APRIL 2019 Standard protective provisions for DCOs.doc](#)  
[IMSE500260-GBV-ZZ-3C3-DR-C-20507.pdf](#)  
[SLP Project – EA Protective Provisions \[draft 13 Nov 19\].doc](#)  
[Environment Agency \(20022740\) Representation for Southampton to London Pipeline Project \(EN070005\).pdf](#)

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Dear Sir/Madam,

**Environment Agency Representation for Southampton to London Pipeline Project (EN070005)**

**PINS Registration identification number: 20022740**

Please find attached our representation for the Southampton to London Pipeline Project Development Consent Order application. The other attachments are relevant to and referenced within our response letter.

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

Kind regards,

**Clark Gordon**

Strategic Planning Specialist, Strategic Planning & Engagement (Thames)

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The Planning Inspectorate  
Temple Quay House  
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BS1 6PN

**Project ref:** Southampton to London  
Pipeline Project – EN070005

**Our ref:** HA/2019/121344/03  
**Your ref:** 20022740

**Date:** 14 November 2019

Dear Sir/Madam

**Application by Esso Petroleum Company Limited for an Order Granting Development Consent for the Southampton to London Pipeline Project**

Please find enclosed our comments for 'deadline 2' submissions for the Southampton to London Pipeline Project Development Consent Order application.

**The Role of the Environment Agency**

The Environment Agency has a responsibility for protecting and improving the Environment as well as contributing to sustainable development.

Our work helps to support a greener economy through protecting and improving the natural environment for beneficial uses, working with business to reduce waste and save money, and helping to ensure that the UK economy is ready to cope with climate change. We will facilitate, as appropriate, the development of low carbon sources of energy ensuring people and the environment are properly protected.

**We have three main roles:**

We are an **environmental regulator** – we take a risk-based approach and target our effort to maintain and improve Environmental standards and to minimize unnecessary burdens on business. We issue a range of permits and consents.

We are an **environmental operator** – we are a national organization that operates locally. We work with people and communities across England to protect and improve the environment in an integrated way. We provide a vital incident response capability.

We are an **environmental advisor** – we compile and assess the best available evidence and use this to report on the state of the environment. We use our own monitoring information and that of others to inform this activity. We provide technical information and advice to national and local governments to support their roles in policy and decision-making.

One of specific functions is as a Flood Risk Management Authority. We have a general supervisory duty relating to specific flood risk management matters in respect of flood risk arising from Main Rivers or the sea.

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## **Environment Agency areas affected**

The proposed pipeline passes through three separate Environment Agency areas – Solent & South Downs, Thames and Hertfordshire & North London. Where a comment relates only to a specific area, we have made this clear as part of our response.

## **Response format**

We have set out our main response in two parts: Appendix A is our written representations, including a summary of our ongoing engagement with the applicant since we provided our last relevant representation response (RR-239) in July. Appendix B is our responses to the Examining Authority (ExA) Written Questions.

Below is an executive summary of our response.

We have agreed and signed a Statement of Common Ground with the applicant for their submission to you by 14 November (deadline 2) as requested.

## **Executive Summary**

Our main outstanding issues and queries relate to the following matters:

- Cove Brook Flood Storage Area – confirmation that trenchless technique will be used for crossing.
- River Thames Scheme (RTS) – discussions are ongoing between the applicant and our RTS team.
- Development Consent Order – negotiations are ongoing to finalise the EA protective provisions to be included in the Order. Our agreement to disapply relevant legislation is conditioned on agreeing acceptable provisions.
- Flood risk – outstanding concerns about the level of detail in the Flood Risk Assessment for works in high flood risk areas.
- Fisheries and biodiversity – ongoing negotiations for timings for works on particular watercourses to avoid detrimental impacts on fish populations. We would like the applicant to commit to high-level principles for delivery of biodiversity / environmental net gain, unless and until we can see further details in the applicant's proposed Environmental Investment Programme.
- Water Framework Directive – outstanding concerns about the level of detail in the Water Framework Directive compliance assessment.
- Groundwater, hydrology and land contamination – our only outstanding concern relates to works on active, permitted landfill sites.

Please do not hesitate to contact us if you require any further information. We look forward to continuing to work with the applicant to resolve any ongoing matters contained within our written representation, and to ensure the best environmental outcome for this project.

Yours faithfully

Clark Gordon  
Planning Specialist  
Environment Agency, Thames area

Charlotte Lines  
Planning Specialist  
Environment Agency, Solent & South Downs area

Att     Appendix A – Written Representations on behalf of the Environment Agency  
Appendix B – Environment Agency responses to Examining Authority Written Questions  
IMSE500260-GBV-ZZ-3C3-DR-C-20507 – Land Plan (attached to e-mail with letter)  
APRIL 2019 Standard protective provisions for DCOs – EA model Protective Provisions  
(attached to e-mail with letter)  
SLP Project – EA Protective Provisions [draft 13 Nov 19] – Current proposed PPs  
(attached to e-mail with letter)

## Appendix A

### Written Representations on behalf of the Environment Agency

#### 1.0 Summary of further engagement with applicant

1.1 Since we sent our relevant representation response (RR-239) for this application on 26 July, we have undertaken further engagement with the applicant (or their agents) as set out below:

- June to November: Communications with the applicant's legal representative about amendments to EA protective provisions.
- June to July: Communications with Jacobs in relation to works at permitted landfill sites.
- July: Meeting with Jacobs to discuss issues raised in EA relevant representations (RR-239).
- August: Meeting between the applicant, EA and Brett Aggregates (site operator) to discuss SLP Project and River Thames Scheme interaction.
- September: Meeting with Jacobs to discuss issues raised in EA relevant representations (RR-239).
- October: We received from Jacobs a draft Statement of Common Ground, minutes from our September meeting and six *Technical Notes* to address EA concerns for specific matters.
- November: We received notification of the consultation to amend or remove logistics or construction hubs. We have no comments to make on this consultation.

1.2 On 13 November, we agreed and signed the current Statement of Common Ground and returned to the applicant for their submission to you as requested. We will continue to work with the applicant to update the SoCG through the examination process to reflect our ongoing engagement.

#### 2.0 Technical Notes

2.1 On 11 October, we received by e-mail from Adam Boyden (Jacobs) six Technical Notes (TNs) to address specific concerns that we raised in our relevant representations response (RR-239). The TNs that we received are undated and unreferenced.

2.2 The Technical Notes that we have received and reviewed relate to the following matters:

- Technical Note 1 (TN1): Works within Flood Zone 3
- Technical Note 2 (TN2): Crossing assessments
- Technical Note 3 (TN3): Source Protection Zone assessment
- Technical Note 4 (TN4): Groundwater Dependent Terrestrial Ecosystems Assessment and Private Supplies
- Technical Note 5 (TN5): Fish
- Technical Note 6 (TN6): Working at depth

2.3 We do not intend to provide detailed comments on our review of the TNs above. Instead, any comments relating to the TNs are included within our topic-specific comments listed below.

2.4 We understand that the applicant intends to submit the TNs as part of their submission for deadline 2.

### **3.0 Summary of outstanding issues**

3.1 Further to our ongoing engagement with the applicant, a number of issues that we raised in our relevant representations response (RR-239) have been satisfactorily addressed (some subject to confirmation and/or further detail to be submitted), in particular a large number of the issues or queries that we raised in relation to groundwater, hydrology and land contamination.

3.2 The main outstanding issues and queries relate to the following matters:

- Cove Brook Flood Storage Area – confirmation that trenchless technique will be used for crossing.
- River Thames Scheme (RTS) – discussions are ongoing between the applicant and our RTS team.
- Development Consent Order – negotiations are ongoing to finalise the EA protective provisions to be included in the Order. Our agreement to disapply relevant legislation is conditioned on agreeing acceptable provisions.
- Flood risk – outstanding concerns about the level of detail in the Flood Risk Assessment for works in high flood risk areas.
- Fisheries and biodiversity – ongoing negotiations for timings for works on particular watercourses to avoid detrimental impacts on fish populations. We would like the applicant to commit to high-level principles for delivery of biodiversity / environmental net gain.
- Water Framework Directive – outstanding concerns about the level of detail in the Water Framework Directive compliance assessment.
- Groundwater, hydrology and land contamination – our only outstanding concern relates to works on active, permitted landfill sites.

### **4.0 Cove Brook Flood Storage Area**

4.1 At our meeting with Jacobs on 19 September, Steve Newman of Jacobs confirmed that the applicant now proposes to use a trenchless crossing technique for the Cove Brook Flood Storage Area (FSA). This was subsequently confirmed in the draft minutes of the meeting, which we received on 11 October, and agreed as final on 12 November. Our preference is for a trenchless crossing of the FSA in order to avoid impacts on the embankment structure.

4.2 The applicant has advised us that the application will be updated to reflect this position and that further detailed designs will follow at a later stage.

4.3 We have previously advised the applicant that the depth of any trenchless crossing must be sufficient to allow us to strengthen or replace the FSA embankment in future, noting that any future foundations may be deeper than the current structure. We have been assured by the applicant that there is sufficient room within the current red-line boundary of the scheme to achieve sufficient depth.

4.4 One new issue that has emerged is within TN1 (Works within Flood Zone 3), paragraph 1.2.7, which suggests that material could be stockpiled within the FSA. We have previously advised the applicant through our pre-application engagement that it would be unacceptable to store material for any length of time within the operational FSA (unless appropriate mitigation and/or compensation was provided for such storage).

4.5 We have requested wording to be included within our protective provisions in the draft order (APP-026) to secure the submission and approval of detailed plans to be submitted to us by the applicant. We are satisfied that with the current information and assurances from the applicant, we do not require any further details to be submitted to us for the crossing of the Cove Brook FSA prior to the determination of development consent.

## **5.0 River Thames Scheme (RTS)**

5.1 Since we provided our previous response to this application, we have held a further meeting between the applicant, the EA and Brett Aggregates (the current site operator) to continue discussions about the design and location of both projects in the Littleton Lane, Shepperton area.

5.2 At the time of writing, our RTS team are waiting for the applicant to submit further costings information to them, in consideration of different route options through the area and discussions are ongoing.

## **6.0 Draft Development Consent Order**

6.1 We are currently still negotiating with the applicant's legal representative to finalise an acceptable set of protective provisions. Most recently, we held a call between our legal representative and the applicant's legal representative on 4 November.

6.2 We sent the applicant's legal representative our latest proposed amendments to the provisions on 13 November. We have included these latest amendments with this response for the attention of the Examining Authority. Please see Appendix B (question DCO.1.39) and the provisions attached with this response.

6.3 We reiterate that we will not agree to disapply any legislation relevant to EA matters until we have reached agreement with the applicant on an acceptable set of EA protective provisions.

## **7.0 Flood risk**

7.1 In reviewing flood risk, we have only provided comments on fluvial flood risk matters. Other flood risk issues (for example surface water and groundwater) are the responsibility of other flood risk management agencies, such as Lead Local Flood Authorities.

7.2 Taking into account the relevant Technical Notes (TNs) (see Appendix A, paragraph 2.2) and other information provided by the applicant since our previous response, some of the issues we raised have been addressed. However, we do not entirely agree with the conclusions of TN1 (Works within Flood Zone 3) and have outstanding concerns about the level of detail provided for sites in high risk flood areas.

7.3 Our key outstanding flood risk concern is that the Flood Risk Assessment (FRA) (APP-134) and other information from the applicant is insufficient to demonstrate that there has been a robust assessment of the potential on- and off-site impacts from the works at an individual, site-specific level. The current assessment is generic and simplistic - setting out principles, and using only basic flood mapping, without providing more detailed maps or data to show the applicant has undertaken a site-specific assessment.

7.4 In addition, we acknowledge that at this stage the applicant is limited in terms of the temporary watercourse crossings designs, temporary in channel works design, depth of pipe under watercourses and methods of working. However, we feel that the applicant should set out in the FRA (APP-134) some principles regarding how these elements are likely to be designed, and set out the measures in terms of design and operation of these elements to show that the flood risk impacts can be managed.

7.5 We acknowledge that some of the detail we seek is to be provided to us at a later stage, in particular details relating to watercourse crossings (and potentially compounds). However, there are still works in areas of high flood risk which we may not be consulted on with further details, so we want to ensure that any such works are carried out appropriately and without increasing flood risk to others, based on the principles agreed in the FRA (APP-134) and other documents.

7.6 The applicant has confirmed to us that there will be no land raising (including for haul and access roads) as part of the development. Assuming this commitment can be formally registered within the application, this addresses our previous concerns on this matter.

7.7 The applicant is proposing to create material stockpiles of no greater than 25 metres (m) in length, with minimum 5m breaks in between, with breaks provided opposite each other where feasible. This is a deviation from our usual request for 10m long stockpiles with 1m breaks. Whilst the applicant's proposals overall provide a greater length of 'gap' than 'stockpile' than we would usually seek, there may be areas where a 25m long stockpile may be inappropriate (for example close to watercourses or across flow paths), and a shorter length of stockpile may be required. This is information that we would expect to be confirmed as part of a site-specific assessment of areas at high risk of flooding.

7.8 Following further meetings with the applicant, and taking into account the consultation that we received this month for the amendment or removal of logistics hubs and/or construction compounds, we now understand that the applicant proposes to site four construction compounds in areas of fluvial Flood Zone 3: Shepperton Road North, Mead Lane, Frimley and Frimley Green Road. We address each of these sites in turn below.

7.8.1 For Shepperton Road North compound, at our meeting with Jacobs on 19 September, we were advised that the applicant would commit to placing any (temporary) buildings and material stockpiles outside of areas of Flood Zone 3 on the site, and any buildings would be raised a minimum of 1m above ground level. The applicant advised us that this will be included in an updated Code of Construction Practice (CoCP). It is unclear that we will be consulted with further detailed designs for this compound at a later stage, so we will require firm commitments at the application stage for the appropriate layout and mitigation measures for this site.

7.8.2 For Mead Lane compound, at our meeting with Jacobs on 19 September, we were advised that the applicant would commit to raising any (temporary) buildings a minimum of 1m



above ground level (which the applicant advises us is at the modelled 1 in 100 year flood level for this site), to be included in an updated CoCP. It is unclear that we will be consulted with further detailed designs for this compound at a later stage, so we will require firm commitments at the application stage for the appropriate layout and mitigation measures for this site.

7.8.3 For Frimley compound, at our meeting with Jacobs on 19 September, we were advised that the applicant would commit to placing any (temporary) buildings and material stockpiles outside of areas of Flood Zone 3 on the site (which only forms a small area of the compound's south west corner) and/or the site boundary would be amended to exclude areas of Flood Zone 3, to be included in an updated CoCP. We note that such an alteration (to the red-line boundary of the compound) has not been included in the most recent consultation of compounds/hubs updates. It is unclear that we will be consulted with further detailed designs for this compound at a later stage, so we will require firm commitments at the application stage for the appropriate layout and mitigation measures for this site.

7.8.4 For Frimley Green compound, at our meeting with Jacobs on 19 September, we were advised that this site is not intended for use as a construction compound, but as an overflow car park area for SC Johnson, should their main car park be required by SLP Project for operational purposes. In this case, we would require further details about the proposed end use as a car park and any flood risk issues associated with this use (including, but not limited to: any proposed treatment/development of the overflow car park, buffer zones to watercourse and flood risk mitigation including access/egress during a flood event). It is unclear that we will be consulted with further detailed designs for this compound at a later stage, so we will require firm commitments at the application stage for the appropriate layout and mitigation measures for this site.

7.8.5 In summary for compounds, we still require further detailed assessment of the construction compounds in Flood Zone 3, using site-specific data (such as topographic surveys) and the latest available flood modelling to ascertain the flood risks on the individual sites. This will help the applicant to demonstrate an appropriate layout and usage of each compound, such that none of the proposed temporary structures or plant/material will divert flood waters or reduce floodplain storage to increase flood risks to third parties. Any temporary buildings on sites, as well as being raised, should also be clear and open underneath to allow the free passage of floodwaters.

7.8.6 We require further details in particular for compounds because we will not be consulted with further detailed designs at a later stage. However, we have requested detailed designs for the compounds to be submitted through our protective provisions, which could negate the requirement for further details to be provided at this stage if the provisions are agreed.

7.9 In our previous response, we queried the discrepancy between the total number of watercourse crossings and the number of associated crossing reports. We acknowledge the applicant's clarification on this matter provided in TN2 (Crossing assessments), although we do not necessarily agree with the justification provided. The applicant states that trenchless crossings (without haul road crossings) have been excluded on the basis that they will not impact on watercourses or floodplains. We agree with this principle, but require the applicant to confirm to us that all excluded crossing reports have assessed whether the launch/receptor pits and/or any plant or material stockpiling are also outside flood risk areas. If this is the case, we agree with these crossings not being included within the FRA (APP-134).

7.10 We have previously requested from the applicant details of approximate lengths of time that stockpiles would be in place for, but have not received this information to date. We would still find this information useful in terms of the approximate lengths of time that stockpiles will be located in flood risk areas.

7.11 There are some existing commitments that have been made in the current Register of Environmental Commitments (REAC) (within the CoCP (APP-128)), cited in the FRA (APP-134) that are either no longer applicable, or require updating:

- W3 (temporary buildings) – this needs to be updated to reflect the latest commitment from the applicant.
- W6 (stockpiles) – this is subject to further discussion with the applicant in relation to the appropriateness of 25m long stockpiles in high risk flood areas.
- W8 and W9 (Cove Brook FSA) – these need to be removed/amended following the applicant’s commitment to using a trenchless technique to cross the Cove Brook FSA.
- G184 (stockpiling in proximity to watercourse crossings) – it is not clear why this commitment is exclusively for watercourse crossings and why a commitment cannot be made to not stockpile within 10m of a watercourse at any point of the scheme.
- G39 (buffer zones) – the wording of this commitment is quite vague; we have agreed with the applicant that material stockpiles will be placed a minimum of 10m from watercourses and compounds a minimum of 8m from watercourses. This commitment should be reflected in the text.

## **8.0 Fisheries & biodiversity**

8.1 Our most substantial outstanding issue relates to timings of works on specific watercourses (tributary of the River Hamble (WCX007), ditch leading to the tributary of the River Hamble (WCX006), Caker Stream (WCX012), Ryebrook Stream (WCX021) and Cove Brook (WCX047)) for the protection of fish. The applicant has justified their proposed timings - set out in Chapter 7 of the Environmental Statement (APP-047) (paragraph 7.5.747) - on these watercourses in TN5 (Fish). We currently do not agree with these works timings; insufficient evidence has been provided to demonstrate that changes should be made to our normal requirements.

8.1.1 For WCX006, WCX007, WCX012 and WCX021, we continue to propose a timing restriction for works not to be undertaken between October and May (inclusive). This is to protect all life stages of sea trout and wild brown trout. Paragraph 1.2.5 of TN5 (Fish) states that there is limited adult fish habitat, opportunity for spawning or juvenile fish habitat of quality, but no evidence is provided to support this statement.

8.1.2 For WCX047, the proposal to reduce the restriction to May from July does not accurately reflect the risk of the works on the fish population in the Cove Brook. While the applicant has assessed the risk to spawning at the location of the crossing (which at the time was heavily vegetated, which may not always be the case), they should also be concerned with the risk to fish migration and downstream spawning areas (particularly with regard to sediment release and potential pollution). The timing restrictions on the Cove Brook should at the minimum be maintained at March-June (inclusive) to appropriately protect the coarse fish spawning habitat in the river.

8.1.3 Should the applicant wish to continue to query the timings for any of the individual watercourses, we would be willing to attend site visits with the applicant at the crossing points, ideally with access both upstream and downstream of the proposed crossing. In doing so, we can assess any amendments to timings on an individual site basis.

8.2 We welcome the applicant's intention to voluntarily work with us (and others) on their Environmental Investment Programme (EIP) for the project. If this is implemented, the scheme may be able to demonstrate a biodiversity net gain. However at this stage, we have not received any further details of the EIP beyond this commitment, although we understand that we may have the opportunity to review a draft report during the examination period. In any case, we would welcome at least some high-level principles to be agreed during the examination process.

## 9.0 Water Framework Directive (WFD)

9.1 Paragraphs 5.2.17 and 5.2.18 of the Environmental Statement Non-Technical Summary (APP-039) refer to dewatering activities during construction. Before discharging this water to the environment the applicant will need to check if they qualify for a permit to discharge. It is vital that any dewatering and discharge of associated water occurs with the appropriate licences in place. This would be particularly important in places with potential contaminated groundwater, such as at Wintershill. Impoundment licences may also be required. We have previously advised the applicant that we cannot agree to disapply the legislation relevant to dewatering and impoundment.

9.1.1 In those locations that have been identified as potentially being impacted by the drawdown effects of dewatering it is vital that Register of Environmental Commitments (REAC) (within the CoCP (APP-128)) commitment G138 ("Water levels would be monitored...") occurs. However, it is not clear how the applicant intends to use this monitoring information, for example what triggers they be looking for, and whether they will they stop dewatering if levels drop below a certain level.

9.1.2 It is important that the hydrological regime of a waterbody is not compromised through dewatering activities, as this is a supporting element to the overall WFD status of a waterbody. It therefore has the potential to compromise the waterbody achieving Good Ecological Status.

9.1.3 In those locations where drawdown is expected to impact on watercourses in connectivity with groundwater, the discharge back to the watercourse should be as close to the expected section impacted by drawdown as possible to prevent a depleted reach effect.

9.2 The WFD assessment (APP-107) in general appears to have limited consideration of chemical status/Priority Hazardous Substance/Priority Substance despite appearing to be flagged as a risk in the Environmental Statement, such as noted in paragraph 5.2.20 of the Environmental Statement Non-Technical Summary (APP-039), which states that existing poor groundwater quality at Wintershill could potentially affect the adjacent watercourse. It is not clear that consideration has been given to the risk to these chemical WFD components as a result of construction (new pathways) or dewatering to watercourses.

9.3 It is also not clear whether the WFD assessment (APP-107) has considered the potential cumulative impact, particularly in those waterbodies where many of the tributaries will be crossed by the pipeline. Although in isolation each crossing could be classed as a minor localised impact, these could combine to form a larger impact across a catchment.

9.5 A WFD assessment should give consideration to both objectives of the WFD: No deterioration in status, and no compromising of the ability to achieve the future target status. It is not clear that the latter objective has been considered in the submitted WFD assessment (APP-107).

## **10.0 Groundwater, hydrology and land contamination**

10.1 The only outstanding concern we have in relation to these matters is for the works through the active, permitted landfill sites that we regulate. At this stage, agreement has not been reached between the site operator/s, the EA and the applicant to enable the Permit variation for works to proceed, but discussions are ongoing.

10.2 Following the applicants submissions of TN3 (Source Protection Zone assessment), TN4 (Groundwater Dependent Terrestrial Ecosystems Assessment and Private Supplies), TN6 (Working at depth) and other confirmations from the applicant, all of the queries and issues that we raised in our relevant representations response (RR-239) in paragraphs 5.1 – 5.11 (inclusive) have been addressed.

10.2.1 We are willing to accept the justification provided for the Source Protection Zones (SPZ) 'ranking' by assigning very high to SPZ1s and other SPZs to high and medium respectively as set out in Table 1 in TN3 (Source Protection Zone assessment).

10.2.2 We are happy to accept the justification provided for the use of UKTAG methodology for Groundwater Dependent Terrestrial Ecosystems (GWDTes) as set out in the applicant's TN4 (Groundwater Dependent Terrestrial Ecosystems Assessment and Private Supplies).

10.2.3 Of relevance to both TN3 (Source Protection Zone assessment) and TN4 (Groundwater Dependent Terrestrial Ecosystems Assessment and Private Supplies) is a note to the applicant that private water supplies have a default SPZ1 of 50 metres and SPZ2 of 250 metres. This is important to take into account for the applicant's commitment that the pipeline will not be laid in SPZ1 (although we note that this verbal commitment has not been included as a REAC commitment, which we would appreciate being included).

10.2.4 We are satisfied with the information provided in the applicant's TN6 (Working at depth) (and associated 'Figure 1' which we received by e-mail from Adam Boyden of Jacobs on 30 October). The applicant has made a commitment to update the CEMP (APP-129) to provide mitigation for 4 additional 'deep burial' locations – on top of existing REAC (within the CoCP (APP-128)) W13 commitment to provide mitigation for trenchless crossings.

## Appendix B

### Environment Agency responses to Examining Authority Written Questions

#### 1.0 Questions from the Examining Authority (ExA) to the Environment Agency (EA)

1.1 Question DCO.1.39 i) – *“Provide an update as to the acceptability of the Protective Provisions contained in Schedule 9 of the draft DCO [AS-059].”*

1.1.1 We are currently engaging with the applicant’s legal representative to finalise the protective provisions. For your information, we have attached our latest amended provisions with this response (reference: *SLP Project – EA Protective Provisions [draft 13 Nov 19].doc*), which we sent to the applicant’s legal representative on 13 November for review, following ongoing discussions between the two parties.

1.2 Questions CA.1.3 iv) and DCO.1.39 ii) – *“Provide a copy of the model Protective Provisions that is proposed for Schedule 11.”*

1.2.1 We have attached with this response a copy of our ‘model’ Protective Provisions (reference: *APRIL 2019 Standard protective provisions for DCOs.doc*). We have already agreed to some amendments to these through our ongoing discussions with the applicant, and our latest position is set out in Appendix B, paragraph 1.1.1 above.

1.3 Question CA.1.8 – *“Annotate Land Plan Sheet 11b [AS-045] showing the overlap in land required by the Proposed Development and the EA for the River Thames Scheme.”*

1.3.1 We have attached with this response a plan as requested (reference: *IMSE500260-GBV-ZZ-3C3-DR-C-20507.pdf*). The plan shows the proposed temporary and permanent works for the River Thames Scheme (RTS) and the Order Limits and Limits of Deviation for the Proposed Development. The plan is not an annotation of Land Plan Sheet 11b (AS-045), but we hope that it will be sufficient for your needs.

1.3.2 The plan shows the proposed EA temporary and permanent land take, and an engineering layer to show the permanent assets and features required by the EA’s scheme.

1.3.3 The EA land take is based on draft Compulsory Purchase Order boundaries prepared by Dalcour Maclaren, working on behalf of the EA (with a minor correction to extend them to cover the full extent of the proposed RTS flood bank). The engineering detail is from an RTS Outline Design GIS layer created by GBV, working on behalf of the EA.

1.3.4 There are ongoing discussions with the site operators (Brett Aggregates) and the applicant to finalise an engineering layout acceptable to all parties. This could change the land requirements for both parties. Dalcour Maclaren are co-ordinating these discussions with the site operator and applicant on behalf of the EA.

1.4 Question FR.1.2 – *“Comment on the absence of an Outline SFDS in the Examination and whether it is agreed that such a document could be submitted as part of the discharge of Requirement 9 of the draft DCO [AS-059].”*

1.4.1 Matters of foul and surface water drainage are for other competent authorities than the Environment Agency. Surface water flood risk and drainage is no longer within the remit of the Environment Agency, but with the Lead Local Flood Authorities. We therefore have no comments to make on this question.

1.5 Question FR.1.3 – *“i) Confirm whether the baseline data included within Chapter 8 of the ES [APP-048] and the accompanying appendices are acceptable.” and “ii) If issues with the baseline have been identified, state what these are. “*

1.5.1 We have identified three areas where baseline data may not be included, or it is unclear whether data has been included.

1.5.1.1 Strategic Flood Risk Assessment (SFRA) data (including for example Flood Zone 3b extents) has only been provided for two local authorities (Surrey Heath and Rushmoor Borough Councils). We would expect the Flood Risk Assessment (APP-134) to consider the SFRAs and associated data for all of the local authorities that the pipeline, compounds and hubs are located within.

1.5.1.2 It is unclear whether the applicant has used all of the best available flood risk modelling data to assess flood risk for works in fluvial flood risk areas, notwithstanding that some of this modelling data will be not be required until assessment at detailed design stages.

1.5.1.3 It is not clear that the applicant has included Chemical Status in the baseline or WFD assessment (APP-107). Chemical status combines with Ecological Status to form the Overall waterbody WFD status. If they have decided to scope Chemical Status out of the assessment, we would expect to see further justification. We note that in other parts of the Environmental Statement land contamination has been identified on the route. Dewatering activities or effecting pathways between ground and surface waters could pose a risk to surface water WFD chemical status, and therefore the overall WFD status for the waterbody.

1.6 Question FR.1.16 – *“i) Provide an update on whether the request for the location of Private Water Supplies (PWS) have been provided to the Applicant.” and “ii) Provide a view on how the absence of this information might affect the Applicant’s assessment in ES Chapter 8 [APP-048] and ES Appendix 8.4: Groundwater Abstraction Assessment [APP-105].”*

1.6.1 We hold limited information about private water supplies, so we will leave responses to part i) to the relevant local authorities.

1.6.2 For clarity, we would suggest avoiding the use of abbreviation “PWS” for private water supplies, as it is more often used for Public Water Supplies, which are the major utility company abstractions.

1.6.3 All private supplies have a default 50 metre (m) Source Protection Zone (SPZ) 1 and 250m SPZ2. This may affect the risk categorisation.

1.6.4 Not all private water supplies are listed on local authority or Environment Agency databases. This can occur where a water supply abstracts less than 20 cubic metres per day and only supplies a single property, as there are limited requirements for owners to register with the local authority or Environment Agency. In any other scenario it would be possible to say the site owner was at fault for failing to register with the relevant authority. Abstractions at risk will therefore be relatively small and the pipeline would have to pass quite close by to present a risk.

1.6.5 A search of the British Geological Survey boreholes database might indicate that a site is being used for domestic supply, but there are number of old wells not on this database. Apart from knocking on doors or some sort of letter drop, it would be difficult to identify any supply that has slipped through the system. As long as the applicant has an emergency response procedure to provide bottled water or bowsers to affected properties and a list of readily available remedial contractors who could attend at short notice to remediate or protect private water supplies, this should be sufficient to mitigate any risks.

1.7 Question PC.1.18 – *“Respond to the issues raised by RR-182 regarding the routing of the Proposed Development through an inert landfill site and how this would affect the current Environmental Permit for the site.”*

1.7.1 We have reviewed the comments provided in RR-182 and it is not clear what or where the comments relate to, so we are unable to provide any comments on this matter at this time. We are unsure whether RR-182 is the correct representation that we were being asked to review. We would be happy to substantively respond to this question if we can be provided with further information.

## 2.0 Questions from the Examining Authority (ExA) to others

2.1 Question BIO.1.34 – *“...Commit to the extended timing restrictions as recommended by the EA and if not, why not...”*

2.1.1 Please note our detailed additional comments on this matter in this response (Appendix A, paragraphs 8.1 – 8.1.3).

2.2 Question DCO.1.24 – *Part 6 Article 35 (2) - Disapplication and modification of legislative provisions*

2.2.1 We have previously advised the applicant that we cannot agree to disapply the need for an abstraction or impoundment licence under the Water Resources Act 1991 or for a water discharge permit under the Environmental Permitting Regulations 2016, and that these consents (if required) will need to be applied for separately. To be clear, the applicant has not sought to disapply these provisions in the draft Order and we are happy with the proposed list of provisions in Article 35 within our remit and subject to approval of protective provisions.

2.2.2 Negotiations with the applicant on the protective provisions are ongoing. We have included our latest proposed amendments to the provisions with this response.

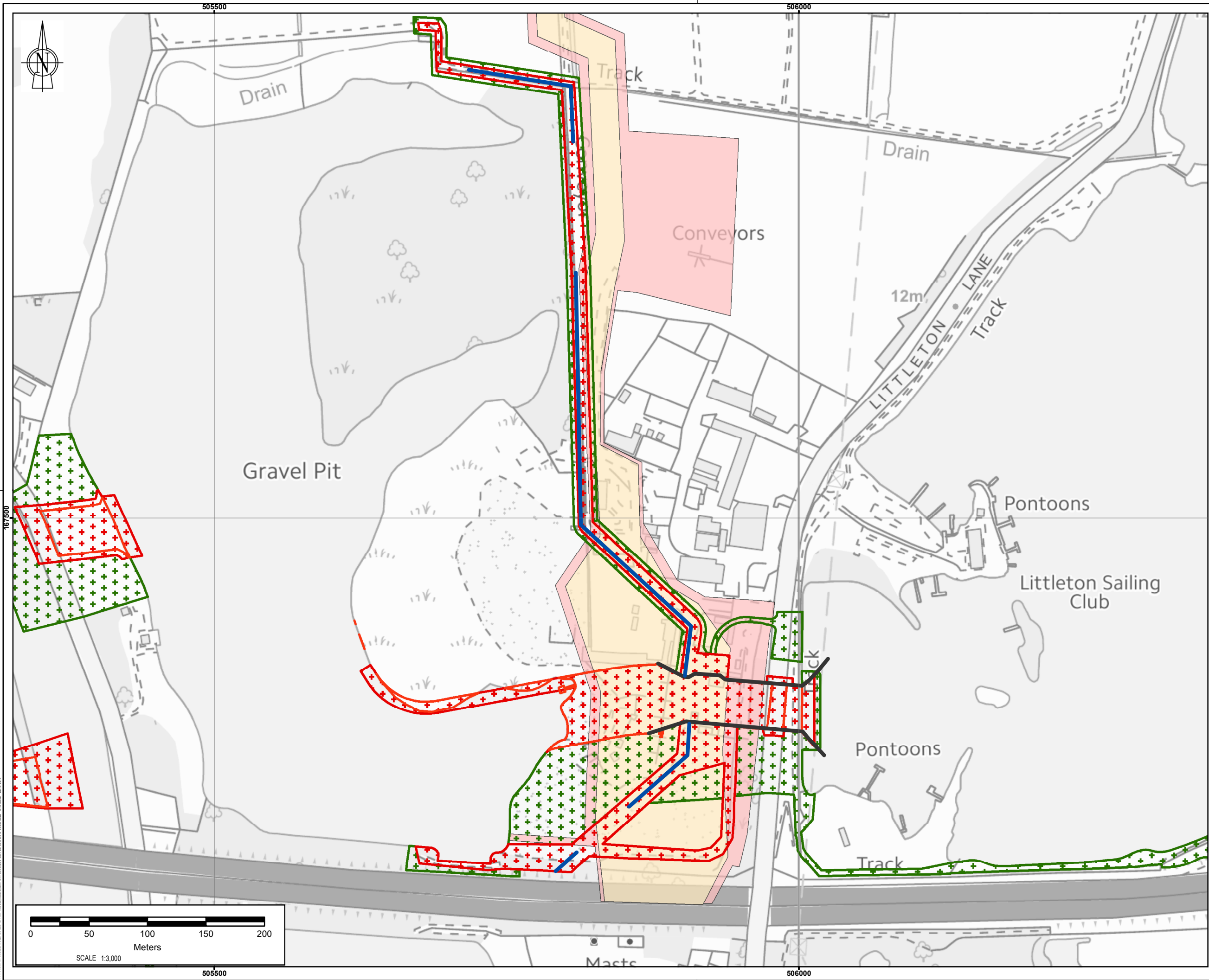
2.3 Question DCO.1.33 – *“Requirement 6 of the draft DCO [AS-059] states that the Construction Environmental Management Plan (CEMP) must be substantially in accordance with the Outline CEMP. However, the Outline CEMP [APP-129] contains scant and in some cases no details regarding the plans and measures set out in Requirement 6(2)(d)...”*

2.3.1 We have been advised by the applicant that a substantial amount of detail to be provided to ensure, for example, the protection of watercourses will be contained within the CEMP. We would like to see additional detail in the Outline CEMP to confirm which (high-level) matters of relevance to our interests will be included in the final CEMP. This will help to ensure that all

matters previously agreed are to be included, and that any EA staff in future reviewing submissions will understand what needs to be included.

2.3.2 We would also welcome any amendments that could be made to the wording for consultation of the CEMP to include the Environment Agency. We are concerned that we may not be consulted by local authorities and there are critical matters in our interest that we wish to review and comment on in any final CEMP.





Note: The limits, including the height and depths of the Works, shown in this drawing are not to be taken as limiting the obligations of the contractor under Contract.

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**LEGEND:**

**SOUTHAMPTON TO LONDON PIPELINE PROJECT**

- ESSO LIMITS OF DEVIATION
- ESSO ORDER LIMITS

**RIVER THAMES SCHEME**

- PERMANENT WORKS
- TEMPORARY WORKS
- FLOOD EMBANKMENT
- ENGINEERED CHANNEL EDGE

**NOTE:**  
1. DRAWING PREPARED AT REQUEST OF EXAMINING AUTHORITY

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**SAFETY, HEALTH AND ENVIRONMENTAL INFORMATION**

IN ADDITION TO THE HAZARDS OR RISKS NORMALLY ASSOCIATED WITH THE TYPES OF WORK DETAILED ON THIS DRAWING, THE FOLLOWING SIGNIFICANT RESIDUAL RISKS SHOULD BE NOTED. FURTHER DETAILS ARE INCLUDED IN THE CDM DESIGN RISK MANAGEMENT REGISTER

**CONSTRUCTION:**  
NOT APPLICABLE

**MAINTENANCE, CLEANING AND OPERATION:**  
NOT APPLICABLE

**DECOMMISSIONING OR DEMOLITION:**  
NOT APPLICABLE

Rev	Drawn	Chkd	Rwd	Apprvd	Date	Description
P01	AJS	NS	NS	EB	23/10/2019	SUITABLE FOR INFORMATION

Designed by: AJS Date: OCTOBER 2019

Client

**River Thames Scheme**

PROTECTING our communities  
SECURING our economy  
ENHANCING our Thames

Client Drawing No. Revision

**gbv** A GALLIFORD TRY, BLACK & VEATCH JOINT VENTURE

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Project

**RIVER THAMES SCHEME (DATCHET TO TEDDINGTON) (RTS) CAPACITY IMPROVEMENTS AND FLOOD CHANNEL (CI&FC)**

Drawing title: **SOUTHAMPTON TO LONDON PIPELINE PROJECT INTERSECTION WITH RIVER THAMES SCHEME**

Drawing scale: 1:3,000 @ A3 Sheet size: A3

Drawing no. IMSE500260-GBV-ZZ-3C3-DR-C-20507 Revision P01

STANDARD PROTECTIVE PROVISIONS  
FOR USE IN DCOs

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the Applicant and the Agency.

(2) In this part of this Schedule—

“the Agency” means the Environment Agency;

“the Applicant” means [    ];

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

“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;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within [8] [16] metres of a drainage work or 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;

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

2.—(1) Before beginning to construct any specified work, the Applicant 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 11.

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

- (a) must not be unreasonably withheld or delayed;
- (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 requested by the Agency for approval and

- (c) may be given subject to such reasonable requirements as the Agency may have 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.

(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).

3. Without limiting paragraph 2, the requirements which the Agency may have under that paragraph include conditions requiring the Applicant, at its own expense, to 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—

- (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.

4.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, 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 shall be entitled by its officer to watch and inspect the construction of such works.

(2) The Applicant 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 Applicant 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 Schedule, the Agency may by notice in writing require the Applicant at the Applicant's own expense to comply with the requirements of this part of this Schedule or (if the Applicant 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) and paragraph 9, 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 Applicant, the Applicant 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 incurred by the Agency in so doing shall be recoverable from the Applicant.

(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 shall 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 11.

5.—(1) Subject to sub-paragraph (6) the Applicant must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land

held by the Applicant 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.

(2) If any such drainage work which the Applicant is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Applicant to repair and restore the work, or any part of such work, or (if the Applicant 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 9, 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 Applicant, the Applicant 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 shall 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 shall 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 11.

(6) This paragraph does not apply to 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.

6. Subject to paragraph 9, 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 Applicant fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the Applicant.

7. 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 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.

8.—(1) The Applicant 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 to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 9, 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 incurred by the Agency in so doing shall be recoverable from the Applicant.

(4) Subject to paragraph 9, 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 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.

**9.** The Applicant shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may incur —

- (a) in the examination or approval of plans under this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under 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.

**10.—**(1) The Applicant is responsible for and shall indemnify the Agency against all costs and losses not otherwise provided for in this Schedule which may be incurred or suffered by the Agency by reason of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised works or the failure of any such works comprised within them; or
- (b) any act or omission of the Applicant, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised works or dealing with any failure of the authorised 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;

“losses” includes physical damage.

(3) The Applicant shall indemnify the Agency against all liabilities, claims and demands arising out of or in connection with the authorised works 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;

(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 Applicant reasonable notice of any such claim or demand and no settlement or compromise shall be made without the agreement of the Applicant which agreement shall not be unreasonably withheld or delayed.

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

**11.** Any dispute arising between the Applicant and the Agency under this part of this Schedule shall, if the parties agree, be determined by arbitration under article [ ] (arbitration), but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for [ ] or its successor acting jointly on a reference to them by the Applicant or the Agency, after notice in writing by one to the other.

**APRIL 2019**

## STANDARD PROTECTIVE PROVISIONS

### FOR USE IN DCOs

#### PART 4

#### FOR THE PROTECTION FOR THE ENVIRONMENT AGENCY

1.—(1) 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.

(2) 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” shall be construed accordingly;

“Cove Brook Flood Storage Area” means ....

“Construction Compound” means any provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of the works or operations authorised by this order and located within Flood Zone 3;

“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;

“Flood Zone 3” means land within Zone 3 as shown on the Environment Agency’s flood map for planning (Rivers and Sea);

“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;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within [8] [16] metres of a main river or the Cove Brook Flood Storage Area or 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;

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

2.—(1) Before beginning to construct any specified work or establish a construction compound on any land which is situated within Flood Zone 3, the undertaker must submit to the Agency plans of the specified work or construction compounds 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 or establishment of a construction compound must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 11.

(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 requested by the Agency for approval in which case the Agency shall 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.

(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).

(a)

**3.** Without limiting paragraph 2 and subject to paragraph 3, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to 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.

**4.—(1)** Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 4, 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 shall 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 shall 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 shall 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 11.

**5.—**(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 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 specified works .

(2) If any such drainage work which the undertaker is liable to maintain, by virtue of paragraph 5(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 9, 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 shall 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 shall 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 11.

(6) This paragraph does not apply to 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.

**6.** Subject to paragraph 9, 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.

7. 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.

8.—(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 shall 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.

9. 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.

10.—(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 authorised 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;

“losses” includes physical damage.

(3) The undertaker must make reasonable compensation for liabilities, claims and demands arising out of or in connection with the authorised works 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 reasonably 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, shall not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

**11.** Any dispute arising between the undertaker and the Agency under this part of this Schedule shall, if the parties agree, be determined by arbitration under article 47 (arbitration).

**November 2019**