

Lake Lothing Third Crossing DCO

Written Representation on behalf of
Northumbrian Water Limited

8 January 2019



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SECTION A EXECUTIVE SUMMARY

- 1.1 This written representation is provided on behalf of Northumbrian Water Limited ("**NWL**") who own and operate Northumbrian Water and Essex & Suffolk Water, and form part of the Northumbrian Water Group. NWL is the freehold owner of Trinity House (and the associated land) (registered under Title number SK347381) located at the southern end of Riverside Business Park. Part of the NWL land falls within the proposed Order Limits.
- 1.2 While NWL has continued to express its in principle support for the proposed Third Crossing (the "**Scheme**") on the basis that it seeks to improve traffic and transport and support economic development and regeneration within Lowestoft, NWL has specific and significant concerns over the current proposals in relation to the likely impact on NWL's land interests and its operations at Trinity House both during construction and the operation of the Scheme.
- 1.3 NWL's key concerns are set out in detail in this written representation, and are summarised as follows:
- (a) There is a significant and serious lack of detail as to the specific nature of the proposed works and the manner in which they will be carried out, and this makes it both difficult to provide an informed response and also makes it less than clear whether Suffolk County Council (the "**Applicant**" or "**SCC**") has properly assessed the worst case scenario in its Environmental Statement through proper adoption of the Rochdale envelope approach.
 - (b) There is a lack of certainty regarding the way in which the construction works are to be phased to ensure that access to Trinity House will be maintained at all times. The interim Code of Construction Practice does not provide sufficient detail to secure such phasing nor does it provide sufficient information on how SCC will mitigate the effects of the construction activities on NWL and other third parties.
 - (c) There are significant concerns relating to traffic and transport, which in addition to the lack of certainty over maintaining constant access to Trinity House during construction, include:
 - (i) the lack of information on the likely impact of HGV traffic during construction;
 - (ii) safety concerns associated with the proposed new junction between the New Access Road and the new Canning Road, and wider concerns over pedestrian safety and access on Waveney Drive;
 - (iii) the underestimation in the Transport Assessment of existing traffic to Riverside Business Park, the lack of accounting for future growth within the Business Park and the lack of taking into account future development of the Jeld Wen site and the effects of these omissions on the design junction of the new Access Road and Waveney Drive;
 - (iv) the lack of justification for reduction in on-street parking within the Riverside Business Park and concerns over the effects of such reduction on non-residential parking requirements in nearby residential streets;
 - (d) There are concerns over noise effects of the Scheme, including:
 - (i) the lack of clarity in the assessment methodology used and resulting accuracy of the assessment of noise effects;

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- (ii) uncertainty as to whether the Applicant has considered Trinity House as a sensitive receptor for the purposes of assessing effects of the Scheme; and
 - (iii) insufficient detail within the application documents, and in particular the interim Code of Construction Practice, in relation to the way in which appropriate noise mitigation measures will be secured.
- (e) The draft DCO does not provide certainty in relation to ensuring that the loss of habitats land through the compulsory acquisition of part of the NWL land will not result in NWL being in breach of the ongoing planning conditions associated with the Trinity House development. The provisions within Article 3(3) of the draft DCO do not address this in relation to NWL's ongoing compliance requirements. It is further noted that SCC do not appear to be offering any net gain in biodiversity as part of the Scheme.
- (f) There are specific concerns with provisions in the draft DCO, including:
- (i) Article 16 (protective works) where the powers being sought are considered excessive and the notification provisions unreasonable;
 - (ii) Article 17 (authority to survey) where powers are to extend beyond the Order limits but without adequate notice and without appropriate inclusion of counter-notice provisions; and
 - (iii) Schedule 2 Requirements, where it is considered the inclusion of deemed discharge is inappropriate, the 6 weeks determination period is too short, and that additional requirements are needed to secure approval of a phased construction programme and approval of the design of all permanent structures and highway junctions.

1.4 NWL acknowledges that the Applicant will be submitting further information at Deadline 3, including further information on traffic and transport and responses to the Examining Authority's first Written Questions, and this new material may seek to address some of NWL's concerns.

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SECTION B INTRODUCTION

2 INTRODUCTION

- 2.1 This written representation is provided on behalf of Northumbrian Water Limited ("**NWL**") who own and operate Northumbrian Water and Essex & Suffolk Water, and form part of the Northumbrian Water Group.
- 2.2 NWL is the freehold owner of Trinity House (and the associated land) (registered under Title number SK347381) located at the southern end of Riverside Business Park. Part of the NWL land falls within the proposed Order Limits under plots 3-43, 3-46, 3-47, 3-48, 4-08, 5-01, 5-02, 5-03, 5-04 and 5-32 and would be subject to compulsory acquisition powers in the DCO.
- 2.3 NWL has been in regular discussions with Suffolk County Council ("**SCC**") regarding the proposed third bridge crossing (the "**Scheme**"). Although NWL has consistently made clear that it does not in principle object to the Scheme, NWL has some concerns regarding the specific content of the DCO application documents, and in the way in which the Scheme would impact on NWL's land interests and its critical operational activities at Trinity House, both during construction and in the operation of the new bridge and surrounding public highway network.

3 NWL OPERATIONS AT TRINITY HOUSE

- 3.1 Trinity House is a strategic operational site comprising a purpose-built customer call centre (for both the Northumbrian and Essex & Suffolk operating regions of NWL). Opened in 2013, Trinity House operates from 7.30am until 8.00pm Monday to Friday and 8.00am until 5.00pm on Saturdays. It employs over 240 people (with capacity for 263), comprising a mixture of full and part time as well as temporary personnel. The peak times for employees accessing and leaving Trinity House are generally between 8:00-9:00 am and 4:00-5:30 pm. The need for shift working and continuous operation of services at Trinity House, as well as company policy that encourages and supports flexi-time workers, requires access to significant car parking. NWL has two car parks with a total of 106 spaces. Even with such provision, NWL staff also utilise on street parking.
- 3.2 NWL is a statutory undertaker regulated by Ofwat. It supplies potable water and associated sewerage and waste water treatment services to 2.7m people in the north east. In the south NWL (through Essex & Suffolk Water) supplies potable water services to over 1.8m people. While NWL operates a virtual billing contact centre through two offices (Trinity House and Northumbria House in Durham), all letter, email and web contact is dealt with in Trinity House. In addition, over two thirds of the NWLs debt collection services operate from Trinity House.
- 3.3 Employees at Trinity House respond to a high volume of customer contacts. The numbers of annual inbound contacts at Trinity House in 2017/18 are as follows:

Inbound Telephone Calls	910,195 ¹
Outbound Telephone Calls	85,232
Letters	206,492
Emails	83,905

¹ Please note that this represents all incoming calls, of which approximately 40% are taken at Trinity House, with 60% taken in NWL's Durham call centre.

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Web chat	69,222
Voice Manager (requests from Priority services customers)	2,053
Fax	947
Visit	661
Text	632

3.4 It takes approximately 7 weeks to recruit new permanent employees at Trinity House. Once recruited, there is a period of up to 3 weeks for training and a further 6 to 12 weeks before the new employee reaches full competency. Staff turnover at Trinity House is very low for this type of operation.

3.5 **Service Incentive Mechanism**

3.5.1 Ofwat operates a Service Incentive Mechanism (SIM) which measures customer satisfaction levels in relation to regulated water and sewerage companies. SIM is a financial incentive that affects the prices NWL is allowed to charge. Regulated companies are ranked against each other based on their SIM score. Those that perform better for their customers will be rewarded with higher price limits. Conversely, those that perform less well will have a penalty imposed. This is achieved through an adjustment to the price limit for each company after all other financial modelling has taken place. NWL estimates that each position in the ranking is worth approximately £1.6m. Penalties can reach £30m for poor SIM performance and therefore this is a key area of focus for NWL's business in terms of delivering unrivalled customer service and avoiding the risk of penalties under the SIM model.

3.5.2 SIM is assessed during four week-long periods throughout the year. These periods are determined by Ofwat and are not disclosed in advance to NWL. The measure is taken from customer surveys, the number of complaints received and the volume of repeat or unwanted contacts during a survey week. Customers surveyed are asked to give NWL a score out of 5. Most of the ten regulated companies achieve an average score of between 4.4 and 4.7. It is clear therefore that very small changes in average scoring can have significant influence on a company's position in the ranking and hence their price limits. This makes operating the call centre and very sensitive issue for NWL.

3.5.3 In the year 2016/17 NWL achieved joint first place in the industry, and in 2017/18 was ranked third for water and sewerage companies. Key to maintaining a high level of service is avoiding any disruption to services that would result in increased customer wait time or noise disturbance during customer calls. Such disruption or interruption of services from Trinity House would result in reputational damage to the business, a lower SIM score, and in certain cases exposure to financial penalties. NWL has calculated that loss of service for one day in a week where it was not assessed for SIM would cost the company £24,000 in wages, £50,000 in guaranteed standard payments and £73,000 in loss of debt collections. Were NWL to be assessed for SIM during the week that such an outage occurred, it would almost certainly achieve a lower SIM score. Consequently, NWL would lose approximately £1.6m for every position lower it is in the rankings.

3.5.4 Compensation for loss of connectivity from the services provider is limited to a small percentage of the connection charges for that period and does not extend to wider associated losses incurred by NWL as a result of the loss of connectivity. It should also be noted that where such disruption is a direct result of the construction of the Scheme pursuant to the DCO, such losses would not be recoverable under the Statutory Compensation Code. Absent suitable mitigation and/or indemnity to protect the operations at Trinity House, this risk would constitute a significant adverse effect

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that has not been identified or assessed in the application documents, notwithstanding that NWL raised its concerns over the impacts on its operations during the pre-application consultation and engagement. It is notable that neither the chapter on private assets in the ES (chapter 15) nor the socio-economic chapter (chapter 16) identify or assess the potential adverse impacts on NWL's business operations from construction or operation of the Scheme.

3.6 Contribution to the Local Economy

- 3.6.1 NWL has operated its customer call centre from Lowestoft since the early 1990s. In response to the need to expand and improve its facility and the desire to retain the operation within Lowestoft, NWL carried out an extensive search which identified the development site at Waveney Drive on Trinity House is located. The site formed part of the Great Yarmouth and Lowestoft Enterprise Zone and was identified as a key employment and economic development site within Lowestoft.
- 3.6.2 The construction of Trinity House was integral to NWL's aims of improving efficiency, providing exceptional customer service, driving company expansion and creating a modern office environment for its employees, and has been based on a long-term commitment to operate its customer centre from Lowestoft. The attraction to Lowestoft for the location of the call centre is a proven track record of being able to attract and retain talented and committed employees at competitive rates and a belief that there is a significant potential for jobs growth in the area.
- 3.6.3 Trinity House represents 10% of the total private investment in the entire Great Yarmouth & Lowestoft Enterprise Zones. Through its operations at Trinity House NWL contributes over £6m per annum to the local economy (through staff and facility costs).
- 3.6.4 NWL is a significant employer in the local community and one of the largest single employers in Lowestoft. Its employees work on a mixture of full time, part time and temporary contracts. They work in shift patterns at different times of the day and evening. This enables NWL to employ staff from a range of demographics, including students and older persons of working age. NWL's move to the purpose-built Trinity House has created approximately 50 new jobs for the local community.
- 3.6.5 The home location for staff at Trinity House is currently 52% north of the Lake, and 48% located south of Trinity House. NWL's continued operation in Lowestoft is reliant upon its ability to use Trinity House without disturbance or interruption.

SECTION C KEY CONCERNS

4 SUMMARY OF KEY CONCERNS

NWL's concerns fall into six main categories:

- i) The absence of detail as to the proposed works;
- ii) The phasing of construction;
- iii) Traffic and transport impacts;
- iv) Noise disturbance as a result of the construction works;
- v) Implications for NWL's compliance with the Trinity House habitat planning condition; and
- vi) DCO drafting issues.

4.1 The absence of detail as to the proposed works

4.1.1 NWL has serious concerns about the lack of detail provided in the application documents as to the proposed works and the implications that this has on its ability to provide an informed response. It is also far from clear from the application documents whether the Applicant has properly assessed the worst case development scenario for the Scheme in its Environmental Statement ("ES").

4.1.2 In addition to its concerns about the assessment of transport and noise impacts in the application documents (discussed further below), NWL does not consider that the Applicant has properly assessed the likely impact of the Scheme upon its business operations at Trinity House. Paragraph 6.3.35 of the ES claims that "*To aid the assessment process the Applicant has engaged with ABP and land owners and businesses within the Order limits to further understand the nature of their operations and how the Scheme would impact them*". NWL does not consider that the Applicant has made genuine efforts to understand the nature of its operations or the potential impact of the Scheme upon its business and operations at Trinity House. Nowhere does the ES mention that the Trinity House operations are particularly sensitive to noise and disruption to access which they are. Despite NWL being a significant employer in Lowestoft, there is no mention of the potential for adverse impacts on NWL in the socio-economic chapter of the ES (chapter 16). Chapter 15 of the ES purports to assess the impacts of construction and operation of the Scheme on private assets including businesses. It identifies NWL (referred to as Essex and Sussex Water) as a receptor (see paragraph 15.4.8) but the only impact that it identifies relates to the loss of a strip of rough grassland that will be subject to compulsory acquisition (see Table 15.4). Chapter 15 entirely fails to acknowledge the effect of construction noise or access concerns that are pivotal to NWL's successful operation. In a Scheme that is predicated on the promotion of economic development, the failure properly to consider adverse impacts on an existing business is particularly concerning and is it odds with one of the underlying objectives of the Scheme to promote economic development.

4.1.3 NWL's particular concerns relate to the New Access Road, described in the draft DCO as 'Work No. 5' and the access into Riverside Business Park, described as 'Work No.4'. Schedule 1 to the DCO provides a very generalised description of Work Nos. 4 and 5, as follows:

"Work No.4 – as shown on sheet 2 of the works plans and being the construction of new highway comprising carriageway and cycleway to provide access to existing premises including the construction of new private means of access to premises as shown on sheet 2 of the rights of way and access plans."

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Work No. 5 – as shown in sheet 2 of the works plans and comprising:

- (a) *the construction of new highway comprising carriageway and cycleway to provide access to existing premises including the construction of new private means of access to premises as shown on sheet 2 of the rights of way and access plans; and*
- (b) *the improvement of existing highways, including realignment, to facilitate tie-ins to the existing highway network and Work No.4 and the construction of new private means of access to premises as shown on sheet 2 of the rights of way and access plans."*

- 4.1.4 The Works Plans do not show the actual proposed alignment of the New Access Road but only show work centrelines and limits of deviation. Article 5 of the DCO allows for Work No.5 to be varied upwards by 1.5m from the levels shown in the engineering section drawings.
- 4.1.5 The General Arrangement Plans are illustrative only and there is no provision in the DCO that secures the details shown in the General Arrangement Plans. There is therefore uncertainty as to what will be developed will accord to the proposals assessed in the ES (which as we explain below seems to be deficient in a number of respects in any event).
- 4.1.6 There is a requirement in Schedule 2 to the DCO that requires the authorised development to be designed and implemented (a) in general accordance with the general arrangement plans and (b) in accordance with the design guidance manual but "general accordance" with illustrative "general plans" provides little detail of what will actually be built, and the Design Guidance Manual has only been submitted in draft form and is still being developed by the Applicant, so the details of the proposed scheme and the assessment of their likely impacts remain far from clear.
- 4.1.7 The Applicant has purported to assess the effects of the Scheme using the Rochdale envelope approach. That requires the establishment of the parameters likely to result in the maximum adverse impact, i.e. the worst case scenario (see PINS Advice Note 9 on the Use of the Rochdale Envelope, July 2018); assessment of that worst case scenario; and the provision of controls in the DCO to ensure that the development does not extend beyond the clearly defined parameters that have been assessed. NWL has not been able to identify from the application documents whether the worst case scenario has been assessed or to identify the controls to ensure that effects do not extend beyond those assessed. This is a significant deficiency in the application documents.
- 4.1.8 The Applicant's ES simply says that a "Reference Design" that "*has been developed to a stage that is appropriate to provide both engineering and construction feasibility and to inform the assessment within the Environmental Statement*" (ES, paragraph 5.2.8). It is that design that has been assessed in the ES. There is no description of what the design entails and no way of NWL or any other interested person interrogating whether it does in fact constitute a worst case scenario.
- 4.1.9 For example, in respect of Work No. 5, within the limits of deviation shown on the Works Plans it would be possible to design a variety of junctions and road layouts. Indeed, the limits of deviation would allow the New Access Road to be constructed with a right-angle turn instead of the curved alignment shown in the General Arrangement Plans, with potential for a new arm into the Jeld Wen site in future. They would also allow for a variety of junction formations between Waveney Drive and the New Access Road which may have greater or different impacts from those that have been assessed in the ES. The Transport Assessment assumes that the New Access Road will be constructed as shown on the General Arrangement Plans but that is not necessarily the case. NWL's transport consultants have advised that there is insufficient information in the DCO and Works Plans, even combined with the draft Design Guidance Manual, to allow for an informed response on the likely implications of the works. They, like the Applicant's advisers, have been forced to rely on the illustrative drawings in the General Arrangement Plans.

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- 4.1.10 NWL notes that the absence of detail in the application documents is a matter that has been raised by (i) the Secretary of State in his Scoping Opinion; (ii) the Planning Inspectorate in its s.51 Advice and (iii) a number of interested parties in their Relevant Representations. Plainly it is a matter to which the Applicant must give further attention.
- 4.1.11 The Scoping Opinion stated (at paragraph 2.40) that
- "The Scoping Report does not provide detailed information on all of the elements of the Proposed Development such as, for instance, the bridge piers and abutments, which are mentioned briefly within Section 2.2. The Applicant should ensure that the description in the ES of the Proposed Development for which the DCO application is made includes all of the proposed structures, and is as accurate and firm as possible as this will form the basis of the EIA. It is understood that at this stage in the evolution of the scheme the description of the Proposed Development may not be completely confirmed. The Applicant should be aware, however, that the description of the Proposed Development in the ES must be sufficiently certain to meet the requirements of Paragraph 17 of Schedule 4 Part 1 of the EIA Regulations and should therefore be more certain by the time the ES is submitted with the DCO application."*
- 4.1.12 Notwithstanding that advice, the description of the Proposed Development remains vague in the application documents. The s.51 Advice from the Planning Inspectorate of 9 August 2018 explained that
- "The Applicant is advised that the appointed ExA may request for the provision/preparation of detailed technical plans and elevations for the design of the bridge, the bridge abutments and the control tower to inform the examination of design matters."*
- 4.1.13 In response, the Applicant simply explained that it had prepared a "reference design" intended to demonstrate a feasible solution for the Scheme while recognising the need to retain flexibility and that it did not propose to submit any further detailed works plans for approval.
- 4.1.14 NWL is concerned that its ability to provide an informed response to the proposed development has been prejudiced by the absence of detail, which was also lacking in the pre-application consultation material and also that the ES may be deficient in that it has not properly adopted a Rochdale envelope approach of identifying the worst case parameters, assessing their effects and securing controls through the DCO to ensure that no additional environmental effects arise.
- 4.1.15 NWL is further concerned that the timings suggested by the Applicant in relation to the construction programme post-consent significantly limit its ability to comment on and influence post-DCO consents and approvals. If the examination is to proceed on the basis of the limited information currently available, then it will be essential for NWL to be properly involved in shaping subsequent details (such as the Code of Construction Practice) to ensure that impacts upon its operations are appropriately mitigated.
- 4.2 **Phasing of Construction**
- 4.2.1 It is essential for NWL's continued operation at Trinity House that its employees can access the building at all times without interruption during the construction period.
- 4.2.2 The proposed construction phases are set out in Section 5 of the ES. They indicate that construction of the Waveney Drive junction and New Access Road will be the first phase, which will mean that a new access to the Riverside Business Park will be provided before the existing access is closed. However, it is not clear how this will be secured.

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- 4.2.3 The draft DCO does not expressly acknowledge that the existing Canning Road junction with Riverside Road will cease to operate, nor does it provide the timing or phasing for its stopping up. The rights of way and access plans (sheet 2) do not show the proposed stopping up of the Canning Road. As a result, the provision in article 10 of the DCO (which prevents the stopping up of certain specified streets until a replacement has been completed) does not apply to the proposed stopping up of Canning Road. It should be further noted that Canning Road is not currently a public highway (but instead a private road owned by Homes England (previously the Homes and Communities Agency)).
- 4.2.4 The interim Code of Construction Practice and other documents submitted by SCC do not provide detail on the sequencing of the various phases of construction. At a minimum, NWL's continued operation at Trinity House require a sequence of works whereby work nos. 4 and 5 (as shown on Works Plan sheet 2 of 2 (ref. 1069948-WSP-LSI-LL-DR-CH-0003)) are completed before the access into Canning Road is stopped up.
- 4.2.5 The DCO should secure a detailed timeline for the phasing of construction that ensures that access to Trinity House (and other premises on the Riverside Business Park) remains uninterrupted. As noted at para 4.1.14 above, the construction timing proposed by the Applicant post-consent gives rise to further concerns as it allows insufficient time for consultation with affected parties such as NWL which will be essential to ensure that impacts are appropriately mitigated.
- 4.2.6 These points were raised in NWL's relevant representation. SCC responded to this at issue numbers DCO13 and LD28 of its Responses to Relevant Representations:

Table 5-3 of the Environmental Statement (document reference 6.1 / PINS document reference APP-136) sets out the anticipated phasing of the works to the local highway network. As is noted in paragraph 5.6.14 of that document, this phasing is indicative and will be subject to detailed design. The Applicant is unable to accept controls over the phasing and sequencing of the construction of the authorised development until such time as the detailed design of the Scheme has been carried out. Flexibility in phasing is required to ensure that the Scheme can be delivered efficiently...

...The Applicant intends to ensure appropriate steps are taken to manage any disruption caused during the construction of the Scheme, including the improvements to the related highway network. Paragraph 2.8.3 of the Interim Code of Construction Practice (document reference 6.3 Appendix 5A to the ES/ PINS document reference APP-163) requires the Contractor as part of the full Code of Construction Practice (CoCP) to set out the traffic management measures that will be applied during the course of the construction phase. This is secured by requirement 4 of the DCO) which requires the CoCP to be approved before the commencement of the Scheme, for the CoCP to be in accordance with the Interim Code of Construction Practice and for the authorised development to be carried out in accordance with the approved CoCP.

- 4.2.7 SCC's response is unsatisfactory. The Applicant may well "intend to ensure that appropriate steps are taken to manage any disruption", but warm words or intentions are not enough. Controls must be secured through the DCO to ensure that works are appropriately phased to provide continuous access to Trinity House is maintained throughout the construction period.
- 4.2.8 SCC has also indicated (at issue number LD5 of its Responses to Relevant Representations) that it "remains in discussion with Statuslist on matters of phasing" (p. 68 of SCC's Response to Relevant Representations). It repeats this assurance in its answer at issue number LD7 (p. 70 of SCC's Response to Relevant Representations). Given these ongoing discussions as to phasing, NWL is hopeful that SCC will be able to confirm within the DCO a detailed sequence for the phasing of

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construction that ensures Trinity House remains accessible and that can be secured through the DCO.

- 4.2.9 NWL notes that this is a matter that has recently been raised by the Examining Authority through its Written Questions, in which it poses the following question to the Applicant (question 1.5):

A high-level construction phasing programme is presented with development commencing in the Quarter 4 of 2019 and opening of the bridge in Quarter 1 of 2022. However very limited detail is presented of the development activities and phasing within this period (Plate 5-2, Section 5.6 of the ES [APP-136]).

Within the key phases (mobilisation, bridge construction, piles, pile caps, piers, bridge deck, southern approach, northern approach, demobilisation and scheme opening) can the Applicant provide details of the main activities within each of the identified phases?

- 4.2.10 NWL endorses that request and seeks express confirmation from the Applicant that works 4 and 5 will be completed before the Canning Road junction with Riverside Road is stopped up. This must be secured through the DCO.

4.3 Traffic and Transport

- 4.3.1 NWL has a number of significant concerns relating to the traffic and transport implications of the Proposed Development both during construction and operation. NWL's transport advisers, Peter Brett Associates ("PBA"), undertook a high level review of the relevant parts of application documents to inform NWL's relevant representation.

- 4.3.2 Since then PBA has carried out a further, more detailed review. Its report is provided at Appendix 1 (*Transport/Highways Supporting Evidence*) and should be treated as part of NWL's Written Representation.

- 4.3.3 The PBA report considers the responses to the Relevant Representations that have been provided by the Applicant but concludes that a number of matters have not yet been satisfactorily addressed. In summary, the PBA report concludes that:

- (a) There is currently no mechanism to ensure that vehicular, pedestrian and cycle access to Trinity House is maintained at all times during the construction period and this must be secured through the DCO;
- (b) There is insufficient detail about the likely impact of HGV traffic on Waveney Drive during construction. Further clarity is required as to the accuracy of the forecast HGV numbers and likely trip distribution and assignment and confirmation that this has been adequately assessed and that the mitigation proposed is adequate and appropriate;
- (c) There are safety concerns associated with the layout of the proposed new junction between the New Access Road and New Canning Road, and the prioritisation of the proposed T-junction should be reviewed and amended in the interests of highway safety;
- (d) Given the substantial increase in traffic volumes as a result of the Scheme, further mitigation should be provided in the form of additional pedestrian crossings on Waveney Drive both during the construction and operational phases of the development. These should be secured through the DCO and provided prior to the start of construction of the Scheme;
- (e) The traffic counts informing the Transport Assessment's (TA) assumptions as to movements to Riverside Business Park were based on a single day in July (which is not a

neutral month) and additional survey work completed by PBA indicates that applicants TA underestimates existing movements. The TA does not appear to take into account the future growth of Riverside Business Park, and as such underestimates traffic that will use the New Access Road. Furthermore, the TA does not account for the allocation of the Jeld Wen site for employment purposes in the area adjacent to the New Access Road. It assumes that no vehicles will load onto the New Access Road from that site. Given that the limits of deviation in the Works Plans allow for the provision of a new link into the Jeld Wen site, the approach in the TA is unrealistic and results in an underestimation of traffic using the New Access Road. The form of the proposed New Access Road / Waveney Drive priority ghost island junction should be reconsidered given the future growth allocated in this area and the actual trips associated with Riverside Business Park;

- (f) The reduction in on-street car parking within the Riverside Business Park will be detrimental to the efficient operation of Trinity House and is likely to push vehicles onto nearby residential streets that are not able to accommodate the additional vehicles. The rationale for reducing on-street car parking is not clear and should not be introduced through the DCO. Consideration should be given to alternative on-street car parking arrangements on the New Access Road, to reduce the likelihood of non-residential parking in neighbouring residential streets (as suggested in the TA).

4.3.4 NWL note that the SCC are proposing to provide updated transport information by 8 January 2019 (as part of submissions associated with Deadline 3 of the Examination timetable) and that some of the issues and concerns raised in NWL's written representation may be covered by these updates. SCC will also be responding the Examining Authority's first set of Written Questions (ExQ1) which include transport-related questions.

4.4 **Noise disturbance from construction and operation of the Scheme**

4.4.1 The call centre activities at Trinity House are acutely sensitive to noise and require that noise levels within the building are minimised. NWL's acoustic advisers, Peter Brett Associates ("PBA"), undertook a detailed sound survey within Trinity House in December 2018, and have carried out an assessment of the noise related assessments within the DCO application materials.

4.4.2 The PBA report is provided at Appendix 2 (*Noise Assessment*) and should be treated as part of NWL's Written Representation.

4.4.3 The PBA report also considers the responses to the Relevant Representations that have been provided by the Applicant but concludes:

- (a) There is a lack of clarity in the assessment methodology undertaken by the applicant and this raises concerns over the adequacy of the assessment;
- (b) SCC have failed to identify Trinity House as a sensitive receptor with respect to its operations and this has resulted in a failure to adequately assess likely operational noise impacts on Trinity House; and
- (c) There has been inadequate assessment of potential noise impacts on Trinity House during the construction of the Scheme.

4.4.4 NWL consider that further noise assessment is required and that appropriate mitigation should be identified. It should be made clear how such mitigation would be secured through the DCO or other appropriate and legally enforceable mechanisms.

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4.5 Implications for NLW's compliance with the Trinity House planning condition

- 4.5.1 As noted in section 3.6 above, NWL carried out an extensive search prior to acquiring the land within the Riverside Business Park for the purposes of constructing a dedicated and bespoke call centre. A key criterion in that search was to maintain and grow its operations within Lowestoft, and recognition that the location was recognised as a key economic and development site within the area.
- 4.5.2 Planning permission was granted on 15 February 2013 for construction of an office building with associated works including means of access, vehicle parking and service yard, storage area, substation and generator housing, hard and soft landscaping and means of enclosure (reference DC/12/1391/FUL) (the "**Trinity House Planning Permission**").
- 4.5.3 The Trinity House Planning Permission contains the following planning conditions relating to the habitat land:
- (a) Condition 10 requires that prior to commencement of any development on the site a detailed survey for reptiles and invertebrates on the whole site shall be carried in accordance with prescribed details approved by the Council.
 - (b) Condition 11 requires that the mitigation measures identified in the ecological survey report shall be implemented in full.
- 4.5.4 Planning permission was granted on 15 April 2014 to fully discharge a number of conditions to the Trinity House Planning Permission including conditions 10 and 11 (reference DC/14/0293/DRC) (the "**Second Conditions Permission**").
- 4.5.5 The Second Conditions Permission confirms (at conditions 5 and 6) that both conditions 10 and 11 have been discharged in accordance with Essex Ecology Services Ltd (EECOS) Invertebrate Study, November 2013, received on 27 January 2014; the Landscape Design Statement and the Habitat Management Plan, March 2014. Compliance with conditions 10 and 11 therefore requires the implementation of the strategies contained in the Invertebrate Study; the Landscape Design Statement and the Habitat management Plan.
- 4.5.6 The Invertebrate Study contains a list of recommendations to help maintain the population of the five-banded weevil wasp, including:
- (a) *"Steep, sparsely vegetated slopes should be retained around the perimeter of the northern part of the site";*
 - (b) *"Ideally, additional south-facing banks could be created, either around the finished development in the southern section or within the retained open land of the northern section, which is currently flat";*
 - (c) *"The slopes need to be exposed to full sun for much of the day – there is no point in creating or retaining such slopes if they are largely shaded by a closely adjacent building or become covered in too much scrub or other vegetation";*
 - (d) *"Wild areas of sparse grassland should be retained, within which yellow-flowering daisy family plants are prominent. Key species include Common Cat's-ear (Hypochaeris radicata), Lesser Hawkbit (Leontodon saxatilis) and hawk's-beards (Crepis species)".*
- 4.5.7 The Landscape Design Statement explains (section 4):

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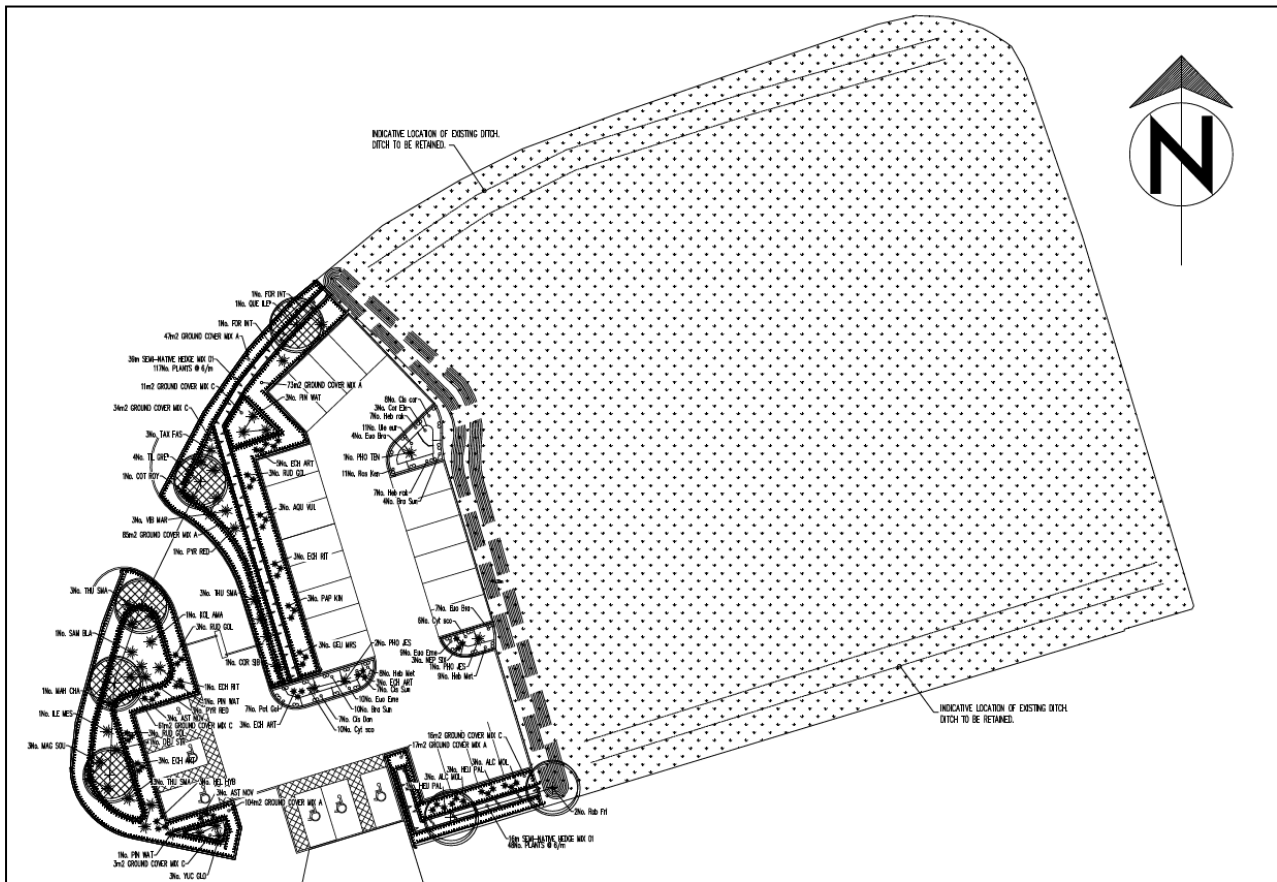
The [Invertebrate Study] set out appropriate recommendations with regard to the various species found on site. These ecological recommendations have been addressed within the Detailed Soft Layout Proposals (JBA 12-323, 02 Detailed Soft Layout Proposals). As such the existing area of grassland to the north east of the site has been retained, along with the ditches that flank the sides of this area. The slopes around the northern perimeter of the site have been retained. To the south east, within the open space, boulders have been incorporated within specimen shrubs to ensure a prolonged period of foraging opportunity for the species recorded. Also, no development (other than car parking) has been included to the north, ensuring the existing area of grassland and slopes to the north remain exposed to sunlight for much of the day.

- 4.5.8 The Habitat Management Plan states that the production of the plan and adherence to it are conditions of the BREEAM Assessment. In order to attain the relevant Land Use and Ecology Credit, it is a mandatory requirement that "a landscape and habit management plan, appropriate to the site, is produced covering at least the first five years after project completion". A five year work programme is set out in section 3 of the Habitat Management Plan.
- 4.5.9 Management prescriptions are dealt with in section 2 of the Habitat Management Plan. Prescriptions and recommendations in relation to Plot 1 and Plot 2 (west) are set out in paragraph 2.1 and Plot 2 (east) set out in paragraph 2.2. Soft Landscape Plans of Plots 1 and 2 are appended to the Habitat Management Plan and are extracted from the Detailed Soft Layout Proposals (JBA 12-323, 02 Detailed Soft Layout Proposals) mentioned above (the "**Mitigation Layout**").

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Soft Landscape Plan (Plot 2)



4.5.10 The recommendations in paragraph 2.2. in relation to Plot 2 (east), which includes the land within the proposed Order Limits, include the following:

- (a) *"Steep, sparsely vegetated slopes should be retained around the perimeter of the northern part of the site";*
- (b) *"The slopes need to be exposed to full sun for much of the day – there is no point in creating or retaining such slopes if they are largely shaded by a closely adjacent building or become covered in too much scrub or other vegetation";*
- (c) *"Wild areas of sparse grassland should be retained, within which yellow-flowering daisy family plants are prominent. Key species include Common Cat's-ear. Lesser Hawkbit and Hawk's-beards. This means that periodic removal of Gorse, Buddleia and Bramble will be required to prevent scrubbing over and retain open habitat";*
- (d) *"Provide areas of open bare ground and areas of stone, brick, rocks or gravel. These dry areas can warm up quickly and will benefit a wide variety of species such as butterflies, bees and wasps (e.g. Mining bees and Solitary wasps), beetles and spiders";*
- (e) *"Provision of invertebrate refugia or 'bug hotels' will provide a range of spaces and microclimates for invertebrates to shelter. These should follow the design outlined*

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in Appendix 3, be located in a sunny location (to north of Plot 2) and consist of a variety of materials”.

- 4.5.11 The Habitat Management Plan sets out a mitigation programme to be delivered over an initial 5 year period but it is apparent from the Landscape Design Statement and the soft landscaping plans and proposals that the Mitigation Layout and recommendations are to be maintained for the duration of the development. NWL is required to maintain the habitat mitigation which includes habitat on land within the proposed Order limits and land over which SCC will retain rights of access that may interfere with the maintenance of the habitat land.
- 4.5.12 SCC proposes to acquire part of the habitat land from NWL for construction and maintenance of the carriageway. It acknowledges that this will result in the loss of a strip of rough grassland created to mitigate the impacts of the Trinity House development on the five-banded weevil wasp.
- 4.5.13 SCC claims that the effect of article 3(3) of the draft DCO is to relieve NWL of the obligation to comply with conditions 10 and 11 of the Trinity House Planning Permission. It appears that SCC relies on s.120(5) of the Planning Act 2008 as empowering it to override other inconsistent planning permissions. Paragraph 5.1 of the Explanatory Memorandum to the draft DCO explains that the provisions in Article 3 rely on section 120(5)(a) of the Planning Act 2008.
- 4.5.14 Section 120(5)(a) allows for the modification or exclusion of certain statutory provisions, but it does not allow for the overriding of extant planning conditions that prove inconvenient to the applicant which do not constitute a 'statutory provision' within the meaning of s.126 Planning Act 2008.
- 4.5.15 There does not appear to be any reference in the DCO application for provision of replacement habitat land in relation to the area of NWL land which will be permanently acquired for the purposes of the Scheme, nor any reference confirming a net gain in biodiversity as would be expected for such a Scheme. Were SCC to fail to provide replacement habitat land, its operations in constructing and operating the Scheme would place NWL in breach of a planning condition with which it could no longer comply
- 4.5.16 NWL supports the Examining Authority in asking SCC question 2.39:
- In addition to those measures already proposed, what further actions are necessary to mitigate the loss of habitat land and landscaping within the areas of Compulsory Acquisition identified in respect of the Northumbria Water Trinity House (Plots 3-43, 3-46, 3-47, 3-48, 4-08, 5-01, 5-02, 5-03, 5-04 and 5-32) that have been previously required through conditions attached to the approved planning permissions?*
- 4.5.17 NWL note that the statement of common ground between SCC and Waveney District Council (November 2018 – document reference SCC/LLTCC/EX/5) includes at Table 4_1 (List of Matters Agreed) the following at Item 29 (in association with the weevil wasp):
- "It is agreed that there is a slight adverse effect on habitat supporting the Weevil-Wasp and consequently replacement habitat for this loss is not required. Furthermore, it is agreed that the management of the remaining habitat in accordance with conditions 10 and 11 of Northumbria Water Limited's planning permission DC12/1391FUL satisfies compliance with these conditions."*
- 4.5.18 It is not clear why Waveney District Council is of the view that a slight adverse ecological impact does not require mitigation. Nor is it clear how Waveney can purport to agree through a Statement of Common Ground with a third party that NWL will not be bound by an extant condition on its planning permission. On the basis of the information currently available, NWL consider that the only way in which it can be released from the relevant planning conditions in

respect of the land subject to compulsory acquisition is through the variation or discharge of that condition through an application pursuant to section 73 of the Town and Country Planning Act 1990 (as amended). Even if SCC was to propose the provision of replacement habitat to mitigate the adverse impact, a s.73 variation would still be required to confirm that the changes on the NWL land resulting from the Scheme would not result in breach of the Trinity House planning conditions.

4.6 DCO Provisions

Article 16 (Protective works to buildings)

- 4.6.1 SCC are seeking the power to carry out (at its own expense) "such protective works to any building lying within the Order limits or which may be affected by the authorised development as [SCC] considers necessary or expedient." Such powers may be exercised at any time prior to or during the carrying out of any part of the authorised development, and up to 5 years following the date on which the project first comes into use. SCC has included in these powers the rights to enter the land and buildings for the purposes of surveys and monitoring (and can leave monitoring apparatus in place). There are then equivalent powers to enter land and buildings for the purposes of carrying out the remedial works, and under Article 16(4) SCC can, if reasonably required, take possession (including exclusive possession) of the land and buildings as part of carrying out the protective works.
- 4.6.2 The exercise of these powers is subject to SCC having served not less than 14 days written notice on owners and occupiers (and where relevant providing specifications of the proposed works). NWL will be entitled to serve a counter notice within 10 days beginning the day the notice was served – requiring the question of whether it is necessary or expedient to carry out the protective works or to enter the land or buildings to be referred to arbitration.
- 4.6.3 The effect of these powers are that, where SCC have determined that protective works are reasonably required to any part of the NWL buildings, they can (subject to notice) secure exclusive possession (i.e. exclude NWL access) to enable these works to take place.
- 4.6.4 SCC's response to the relevant representation (Issue DCO12) states that the basis for extending such powers beyond the Order Limits is that "certain buildings that could require protective works are on the edge of the Order Limit; accordingly, it is considered necessary to include a power enabling the Applicant to access land to undertake survey and monitoring work outside of the Order Limits on land adjacent to these buildings. The power ensures that such access may be taken, should that be required." This response fails to recognise the full breadth and depth of the powers being sought under Article 16, which extend beyond access to land for survey and monitoring works to include:
- (a) powers under article 16(3) to enter and survey any buildings falling within paragraph (1), any land within its curtilage, and adjacent land outside its curtilage. Article 16(1) provides for both buildings within the order limits as well as buildings "which may be affected by the authorised development"; and
 - (b) powers under article 16(4) to enter the buildings and land within or adjacent to its curtilage for the purposes of carrying out protective works, and this article extends these powers so that "*if it is reasonably required, the undertaker may take possession, or exclusive possession, of the building or land or any part thereof for the purposes of carrying out the protective works*".
- 4.6.5 Such powers are akin to seeking compulsory acquisition powers (on a temporary basis) without having to comply with the relevant statutory tests, and this is further re-enforced by Article 16(10) which seeks to apply section 13 of the Compulsory Purchase Act 1965 under which SCC is able to

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seek a warrant to enter onto the land (and this would extend to entering into the building) subject to the Article 16 powers where the owner refuses access.

4.6.6 Notwithstanding the provisions for notice and the service of counter-notices, NWL remains concerned over the extent of the powers being sought under article 16, and the nature of the process. Specifically, NWL considers the extension of powers for access to third party buildings and land outside the Order Limits, and in particular the inclusion of rights to secure temporary exclusive possession to be excessive and unreasonable given the potential for significant financial and operational impacts to its business if such powers are used.

4.6.7 Should such powers be included in the DCO:

- (a) the period for advance notice should be increased to at least 3 months on the basis that this impacts on property owners and occupiers who have not had the benefit of prior notification as is the case for land within the order Limits;
- (b) the period for issue of a counter-notice should also be extended to at least 28 days to enable recipients of the notice to properly consider the proposals and specifications for the protective works and the effects these might have on their property (and their use of their property);
- (c) provisions are included for affected property owners to review and approve proposed protective works, including timing and access arrangements; and
- (d) provisions to enable agreement to be reached with owners in relation to such protective works.

Article 17 (authority to survey and investigate land)

4.6.8 SCC seek the power to enter onto any land within the Order limits, and where reasonably necessary, any land adjacent to, but outside the Order limits, for the purposes of carrying out surveys, investigations, excavations regarding the nature of the surface layer and subsoil, ecological and archaeological investigations (including excavations and trial holes), to leave apparatus on land as part of such activities.

4.6.9 NWL considers that:

- (a) on the basis that these powers extend to land outside the Order limits, the exercise of these powers through service of a notice should include the ability for owners and occupiers to issue a counter notice that requires the question as to whether the specific purpose for which the powers are being sought under Article 17(1) are reasonably necessary and justified be referred to arbitration; and
- (b) the notice provisions be amended to increase the period to at least 3 months, with counter-notices period to be at least 28 days to enable the recipients consider the impact of the proposed activities and to take such steps as are necessary to either challenge or prepare for such activities (and thereby mitigate losses).

Schedule 2 Requirements

4.6.10 NWL has concerned with the deemed discharge of requirements proposed at paragraph 15(2) of Part 2 of Schedule 2. The effect of the provision is that if the discharging authority does not determine an application to discharge a requirement within the period set out in para 15(1), "the discharging authority is taken to have granted all parts of that application (without any condition or qualification) at the end of that period". SCC's Response to Relevant Representations (Issue

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DCO13) claims that it is "appropriate to include deemed discharge provisions as they are necessary to ensure that this nationally significant infrastructure project is delivered without undue delay."

- 4.6.11 NWL does not agree with this position. The proposed arrangements would fail to ensure that the impacts of the activities for which discharge is sought have been adequately considered by the discharging authority. Part 2 of Schedule 2 contains appeal procedures at paragraph 17 which are well established in the context of DCOs. These include (as set out in para 17(1)(b) the ability to appeal for non-determination within the required time period. The inclusion of this arrangement is not consistent with the deemed approval provision referred to above and in any event it provides sufficient recourse for SCC to resolve applications where determination is not made as required. It obviates the need for the deemed consent provisions at paragraph 15(2).
- 4.6.12 NWL further considers that the period of 6 weeks for determining applications under this Schedule to be insufficient, particularly in relation to such crucial elements such as the final Code of Construction Practice (Requirement 4), where the potential impacts on local businesses and residents are great, and where additional consultation with the EA and WDC is required. A period of at least 8 weeks would be more appropriate. There should also be a mechanism whereby interested land owners should be consulted on the draft Code prior to it being approved in order to ensure that it contains provisions sufficient to mitigate impacts that would otherwise be experienced by them.
- 4.6.13 NWL considers that additional requirements should be included to deal with the following:
- (a) submission and approval of a phasing programme for the authorised works to ensure that specific works are undertaken and completed prior to closure or re-direction of public highways and access routes; and
 - (b) approval of design details relating to all permanent structures and highway junctions (in lieu of the blanket compliance position set out at requirement 2 which lacks detail and certainty).

Bryan Cave Leighton Paisner (on behalf of Northumbrian Water Limited)

8 January 2019

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APPENDIX 1 TRANSPORT/HIGHWAYS SUPPORTING EVIDENCE

(PROVIDED AS A SEPARATE DOCUMENT DUE TO FILE SIZE)

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APPENDIX 2 NOISE ASSESSMENT

(PROVIDED AS A SEPARATE DOCUMENT DUE TO FILE SIZE)

Getting in touch

Please don't hesitate to get in touch if you would like to discuss anything covered or raised within this document.

London

Adelaide House, London Bridge
London EC4R 9HA England

James Good

Tel: +44 (0)20 3400 4381

james.good@bclplaw.com

Robert Gowing

Tel: +44 (0)20 3400 2131

robert.gowing@bclplaw.com