

Lake Lothing Third Crossing DCO

Submission at Deadline 5 on behalf of
Northumbrian Water Limited

22 February 2019



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- 1.1 Northumbrian Water Limited ("**NWL**") made oral representations to the Examining Authority at Issue Specific Hearing 1 on 13 February 2019 in respect of Suffolk County Council's (the "**Applicant**") DCO application for a Third Crossing at Lake Lothing, Lowestoft.
- 1.2 This submission is made on behalf of NWL. It provides a summary of NWL's oral submissions at Issue Specific Hearing 1 and further representations in response to the Applicant's submissions at Deadline 4. NWL did not participate or provide any oral submissions at the Issue Specific Hearing 2 (in relation to compulsory acquisition) on the basis that relevant information was already communicated at the Hearing 1.

Summary of NWL's Oral Submissions at Issue Specific Hearing 1 (draft DCO)

Deemed discharge of applications

- 1.3 NWL welcomes the Applicant's amendment to paragraph 16 of Schedule 2 of the draft DCO, which extends the determination period for the discharging authorities from 6 weeks to 8 weeks.
- 1.4 Schedule 2 of the draft DCO requires that approval is obtained from the local planning authority for a number of significant matters in respect of which there is very little detail at this stage. These matters include the detailed design of the scheme, the code of construction practice, landscaping, surface water drainage and highways lighting. As a significant amount of detail remains to be produced, NWL is concerned that the local planning authority will struggle to determine these matters within the 8 week determination period. In this context, it would be inappropriate for the Applicant to benefit from the deemed discharge of applications that are not determined by the local planning authority within 8 weeks. NWL contends that paragraph 16 of Schedule 2 of the DCO should be amended to remove the provision for deemed discharge. It is particularly inappropriate to rely on deemed discharge provisions in this case given the absence of detail as to the design of the proposed development and other matters that have the potential to impact a significant number of parties, including NWL.
- 1.5 At Issue Specific Hearing 1, the Examining Authority sought views from Suffolk County Council, in its capacity as local authority, and Waveney District Council on the deemed discharge provision. Suffolk County Council provided some reassurance that, although this provision is not ideal, it was happy that pre-application discussions with the Applicant would enable it to determine all applications within 8 weeks. However, it should be noted that the draft DCO does not require that pre-application discussions take place and neither the Examining Authority nor interested parties can have any guarantee that these will take place. Indeed, given that the Applicant proposes to deliver the scheme through a design and build contract, the timescales for which appear to be very tight, full details are likely to be worked up only shortly before submission to the discharging authority. This means that there will be very limited opportunity for any meaningful pre-submission discussions between the Applicant and discharging authority.
- 1.6 While the Examining Authority's questions on the deemed discharge provision focused mainly on Suffolk County Council, it should be noted that the obligation to discharge most of the requirements in Schedule 2 to the draft DCO lies with Waveney District Council. Its comments at Issue Specific Hearing 1 confirmed that the deemed discharge provision were not ideal.
- 1.7 Given the relationship between Suffolk County Council as Applicant and Suffolk County Council and Waveney District Council as local authorities, it is particularly important to ensure that there is transparency in the discharge of requirements and that appropriate checks and balances are secured through the DCO in order to avoid any appearance of bias.

- 1.8 As originally drafted, paragraph 18(1)(b) of Schedule 2 to the draft DCO allowed the Applicant to appeal to the Secretary of State in the event of non-determination. NWL considers that strikes the right balance between the Applicant's desire to avoid undue delay in the discharging of requirements and the interests of affected parties to be adequately protected through proper scrutiny of the proposals submitted to discharge those requirements. However, the Applicant removed this provision from the draft DCO at Deadline 4. NWL invites the Examining Authority to reinstate the provision dealing with appeals against non-determination in paragraph 18 and to remove the deemed discharge provision at paragraph 16.

The lack of detail on scheme design means that it is especially important for the DCO to include provisions that prevent the environmental effects of the final scheme from exceeding those assessed in the Environmental Statement. NWL refers the Examining Authority to the concerns that it has raised regarding the absence of detail at section 4.1 of its Written Representation of 8 January 2019. The Environmental Statement has only assessed a 'Reference Design' and there is insufficient detail available to enable NWL to understand whether that Reference Design actually constitutes the realistic worst case appropriate for assessment in the Environmental Statement. The description of Works in Schedule 1 to the draft DCO is vague and all drawings are illustrative. NWL invites the Examining Authority to ensure that provision is included in the DCO to ensure that the environmental effects of each of the proposed Works does not materially exceed that which has been assessed in the Environmental Statement

Article 3(3) – disapplication of planning conditions

- 1.9 Article 3(3) of the draft DCO seeks to disapply conditions of planning permissions that are inconsistent with the DCO on land within and adjacent to the DCO's red line boundary. The Applicant relies on section 120 of the Planning Act 2008 to disapply these conditions. NWL does not consider that the disapplication of inconsistent planning conditions falls within the scope of s.120 and is not aware of any precedent in which a DCO has disapplied conditions on planning permissions within or adjacent to the Order Land.
- 1.10 Provided the Secretary of State is content that the Planning Act authorises the disapplication of planning conditions and that Article 3(3) of the draft DCO can properly relieve NWL of its duty to provide habitat on the Order Land, then NWL would have no concerns about the compulsory acquisition of the relevant land. In the event that the Secretary of State does not consider that s.120 authorises the disapplication of inconsistent planning conditions, then NWL's concerns about the breach of the conditions on its Trinity House planning permission (as set out in its Relevant and Written Representations) remain outstanding.
- 1.11 NWL is not content to rely on statements from Waveney District Council in its statement of common ground with the Applicant that it would not take enforcement action against NWL in the event of a breach of its planning conditions caused by the DCO scheme. Such assurances are insufficient to protect NWL against potential enforcement action. NWL has suggested that the Applicant submit an application to vary the habitat condition on the Trinity House planning permission in order to protect NWL, but to date it has not agreed to do so.

Articles 16 and 17

- 1.12 These articles have not been amended in the latest version of the draft DCO. As such, NWL's concerns expressed in its Written Representation dated 8 January 2019 remain outstanding.

NWL's Response to the Applicant's Submissions at Deadline 4

- 1.13 NWL has received copies of the Applicant's submissions at Deadline 4. Following receipt of the additional transport information at Deadline 4, NWL sought from the Applicant details of the data and underlying information relating to the new junction capacity assessment at the proposed

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junction at Waveney Drive and the New Access Road. That information accompanied the original Transport Assessment but was absent from the revised assessments in the Applicant's Deadline 4 material. Without that underlying information it was not possible for NWL's transport consultants to carry out a meaningful review of the Deadline 4 material.

- 1.14 The Applicant's transport advisors have now provided NWL with the data and information underlying its revised transport assessment. NWL's consultants are reviewing that information to ascertain whether the concerns identified in NWL's Written Representation have been satisfactorily addressed. Unfortunately it has not been possible in the time available to complete that review or form a concluded view as to whether it suffices to address NWL's concerns.
- 1.15 At Deadline 4, the Applicant submitted a response to the Acoustic Supporting Evidence that was appended to NWL's Written Representation dated 8 January 2019. NWL's noise consultants are reviewing this response. As with the information provided on transport, there has not been sufficient time for NWL's consultants to complete this review.
- 1.16 NWL continues to engage with the Applicant and its advisors on the above matters, but to the extent that it is necessary, NWL will provide the Examining Authority with further representations to confirm its position on any outstanding environmental concerns in advance of the Issue Specific Hearing on environmental matters scheduled for 7 March 2019, and would attend that Hearing to make further oral representations.

Bryan Cave Leighton Paisner LLP

22 February 2019

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