

A1 Birtley to Coal House

Scheme Number: TR010031

7.5H Statement of Common Ground with Northumbrian Water Limited

Rule 8(1)(e)
Planning Act 2008

The Infrastructure Planning (Examination Procedure Rules) 2010
July 2020

Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Examination Procedure Rules)
2010**

The A1 Birtley to Coal House
Development Consent Order 20[xx]

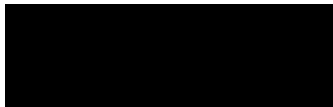
**STATEMENT OF COMMON GROUND WITH NORTHUMBRIAN
WATER LIMITED**

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Rev 1	21 July 2020	Deadline 11 Submission

STATEMENT OF COMMON GROUND

This Statement of Common Ground has been prepared and agreed by (1) Highways England Company Limited and (2) Northumbrian Water Limited.



Signed.....

Nicola Wilkes

Project Manager

on behalf of Highways England

Date: 21 July 2020



Signed

Hazel Anderson

Partner, Winckworth Sherwood

on behalf of Northumbrian Water Limited

Date: 21 July 2020

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1. INTRODUCTION

1.1 Purpose of this Document

1.1.1 This Statement of Common Ground (this "SoCG") relates to an application made by Highways England (the "Applicant") to the Secretary of State via the Planning Inspectorate (the "Inspectorate") under the Planning Act 2008 (the "2008 Act") for a Development Consent Order (DCO). If made, the DCO would grant consent for the A1 Birtley to Coal House (the "Scheme"). A detailed description of the Scheme can be found **Chapter 2** of the Environmental Statement (ES) [**APP-023**].

1.1.2 This SoCG does not seek to replicate information which is available elsewhere within the Application documents. All documents are available on the Inspectorate website.

<https://infrastructure.planninginspectorate.gov.uk/projects/north-east/a1-birtley-to-coal-house-improvement-scheme/>

1.1.3 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the parties to it, and where agreement has not (yet) been reached. SoCGs are an established means in the planning process of allowing all parties to identify and so focus on specific issues that may need to be addressed during the examination.

1.2 Parties to this Statement of Common Ground

1.2.1 This SoCG has been prepared by (1) **Highways England** as the Applicant and (2) **Northumbrian Water Limited**.

1.2.2 Highways England became the Government-owned Strategic Highways Company on 1 April 2015. It is the highway authority in England for the strategic road network and has the necessary powers and duties to operate, manage, maintain and enhance the network. Regulatory powers remain with the Secretary of State. The legislation establishing Highways England made provision for all legal rights and obligations of the Highways Agency, including in respect of the Application, to be conferred upon or assumed by Highways England.

1.2.3 Northumbrian Water Limited (NWL) is the statutory undertaker responsible for providing mains water and sewerage services in the vicinity of the Scheme. NWL owns apparatus which will be affected by the Scheme, some of which is (or is potentially) in existing highway and some of which falls outside the highway boundary.

1.3 Terminology

1.3.1 In the tables in the Issues chapter of this SoCG, "Not Agreed" indicates a final position, and "Under discussion" where these points will be the subject of on-going discussion wherever possible to resolve, or refine, the extent of

disagreement between the parties. "Agreed" indicates where the issue has been resolved.

- 1.3.2 It can be taken that any matters not specifically referred to in the Issues chapter of this SoCG are not of material interest or relevance to NWL, and therefore have not been the subject of any discussions between the parties. As such, those matters can be read as agreed, only to the extent that they are either not of material interest or relevance to NWL.

2. RECORD OF ENGAGEMENT

2.1.1 A summary of the meetings and correspondence that has taken place between Highways England and NWL in relation to the Application is outlined in Table 2.1.

Table 2.1 - Record of Specific Engagement

Date	Form of correspondence	Key topics discussed and key outcomes
18/12/2017	Letter received by NWL from WSP (on behalf of Highways England)	Enquiries regarding C3 draft schemes and budget estimates
22/03/2018	Correspondence from NWL water apparatus team to WSP (on behalf of Highways England)	C3 budget estimates provided by NWL to WSP
23/03/2018	Correspondence from NWL sewerage apparatus team to WSP (on behalf of Highways England)	C3 budget estimates provided by NWL to WSP
08/07/2019	Letter received by NWL from WSP (on behalf of Highways England)	Enquiries regarding C4 detailed scheme and detailed estimates (for 37" Derwent Main only)
From July 2019 and ongoing	Ongoing technical dialogue	Scope of C4 investigatory works (for 37" Derwent Main only)
29/01/2020	Email from NWL submitted to Examining Authority	Registering NWL as a registered party.
February 2020	Highways England response in Examination submission	Noted response in REP1-026 regarding the protection of assets and services for customers.
20/04/20	Emails to NWL from Highways England.	To seek further information regarding any potentially compensatable interests and, if so, will they be making a claim. Discussions are ongoing between the Applicant and NWL regarding the protection of assets and services for customers.

Date	Form of correspondence	Key topics discussed and key outcomes
21/05/2020	Purchase order issued by Highways England to NWL	Regarding trial holes required at Smithy Lane to determine necessity of diversion of 37" Derwent water main (Work No.22)
22/05/2020	NWL submission to Highways England	NWL provided Highways England with amended draft of Protective Provisions previously supplied to NWL along with a draft Agreement to address concerns regarding the approach to works affecting any NWL apparatus.
04/06/2020	Conference call between Highways England and NWL	Further discussions between technical teams regarding possible diversion of 37" Derwent water main and works to assess necessity of this.

3 ISSUES

3.1.1 This section sets out the ‘issues’ which are agreed, not agreed or are under discussion between NWL and Highways England.

Table 3.1 Issues related to Accessing Northumbrian Water’s Apparatus

Section	Sub-section	Northumbrian Water Limited	Highways England Position	Status
Appendix 3.3C - S128 Statutory Undertakers Apparatus	Northumbrian Water	<p>NWL does not have any operational land which is proposed to be acquired permanently or temporarily under the development consent order (“DCO”). However, NWL does have water and sewerage apparatus contained in land which is proposed to be acquired under or affected by the DCO and, therefore, has either rights of access or rights to place the apparatus within that third party land. For this reason, NWL does have compensatable interests in land included within the DCO.</p> <p>In line with the NRSWA Code of Practice, NWL’s starting point is that apparatus, particularly the 37” Derwent main (which is the subject of Work No, 22 in the draft Order), which is such a critical water supply asset, should not be moved because of the proposed</p>	<p>Discussions are ongoing on the precise details of works, including provision of access, need to divert NWL’s apparatus and undertaking of investigative work including trial holes (specifically in relation to determining whether the 37” Derwent water main requires a diversion and, therefore, whether Work No. 22 is required).</p> <p>The parties have now agreed the draft protective provisions and the final issues in respect of the draft Agreement are in the process of being closed out. The Agreement is expected to complete after the close of the examination.</p>	Under Discussion

Section	Sub-section	Northumbrian Water Limited	Highways England Position	Status
		<p>works to the A1 unless it cannot safely be protected.</p> <p>NWL has also provided Highways England with an amended draft of Protective Provisions previously supplied to NWL by Highways England and a draft Agreement (see below)</p>		
		<p>Diversions may be required to apparatus, at the following locations. However, this list is not exhaustive and may be revised when further technical and design information is made available.</p> <p>For water apparatus:</p> <ul style="list-style-type: none"> • Through Coal House (J67) roundabout • Between Allerdene bridge and Smithy Lane see Work 22 • Through Eighton Lodge (J66) • Between North Dene footbridge and Birtley (J65) <p>For sewerage apparatus:</p> <ul style="list-style-type: none"> • Sewer to the east of 1, Lady 	<p>Work No 22 is a diversion of NWL's 37" Derwent water main. As explained above, there are ongoing technical discussions and trial hole works taking place to determine whether such diversion is necessary.</p> <p>The principle of undertaking other diversions in these locations has been agreed and included within Appendix 3.3C - S128 Statutory Undertakers Apparatus (WQ.3.3.2) [REP8-020]. Details of scope, remit and programme for these works are currently under discussion between the two parties.</p>	<p>Under Discussion</p>

Section	Sub-section	Northumbrian Water Limited	Highways England Position	Status
		Park <ul style="list-style-type: none"> • Storm sewer next to A1 Allerdene Bridge over East Coast Main Line • Combined sewer at Eighton Lodge interchange • Sewer crossing the A1 by Lockwood Avenue • Storm sewer at Northside, Birtley 		

Table 3.2 Issues related to the Draft Protective Provisions

Section	Sub-section	Northumbrian Water Limited	Highways England Position	Status
Document in Full	All sections	On 15 July 2020, Highways England confirmed by e-mail to NWL that the final issue in respect of the Protective Provisions was conceded and as a result the protective provisions are now in an agreed form.	Highways England has agreed the final form protective provisions in the form attached which are to be included at Schedule 11 Part 4 to the Order .	Agreed

Table 3.3 Issues related to the Draft Agreement

Section	Sub-section	Northumbrian Water Limited	Highways England Position	Status
Document in Full	All sections	<p>A Draft Asset Protection Agreement has been prepared by NWL and issued to Highways England on 22 May 2020.</p> <p>NWL owns apparatus which will be affected by the A1 BCH scheme, some of which is (or is potentially) in existing highway and some of which falls outside the highway boundary.</p> <p>The Asset Protection Agreement covers the potential effects of the construction and operation of the A1 BCH scheme on NWL’s statutory undertaking and to provide a consistent approach between the arrangements for affected apparatus within and beyond the highway boundary.</p> <p>The Asset Protection Agreement includes an agreement that NWL will refrain from further opposition to and participation in the Examination stage of the draft Order.</p>	<p>Highways England has reviewed this document and is in correspondence with NWL on the content of the Asset Protection Agreement. The parties are close to agreement on the outstanding matters but are likely to complete the Agreement soon after the close of the examination.</p>	Under Discussion

APPENDIX A - FINAL FORM PROTECTIVE PROVISIONS

SCHEDULE 11

Protective Provisions

PART 1

For the protection of Northumbrian Water Limited

39.—(1) For the protection of Northumbrian Water Limited the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northumbrian Water Limited.

40. In this part of this schedule:-

“alternative apparatus” means any temporary or permanent alternative apparatus adequate to enable Northumbrian Water to fulfil its statutory function in a manner no less efficient than previously;

“apparatus” means the following items within the Order limits (except where paragraph 47(7) applies)-

(a) in the case of Northumbrian Water’s water undertaking –

(i) mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations or other apparatus, structure, tunnel, shaft or treatment works or accessories (as defined in section 219(1) of the Water Industry Act 1991) belonging to or maintained or used by Northumbrian Water for the purposes of water supply; and

(ii) any water mains or service pipes which are the subject of a notice of intention to adopt under section 51A of the Water Industry Act 1991; and

(b) in the case of Northumbrian Water’s sewerage undertaking –

(i) any sewer, drain or disposal works vested in Northumbrian Water under the Water Industry Act 1991;

(ii) any sewer, drain or disposal works which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories (as defined in section 219(1) of the Water Industry Act 1991) forming part of any such sewer, drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“emergency” means a situation which-

(a) is unexpected, in that there is little or no prior warning, or aspects of the event could not have reasonably been predicted in advance;

(b) is a serious event presenting a risk of harm or damage to people, property or the environment; and

(c) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“Northumbrian Water” means Northumbrian Water Limited, a company incorporated and registered in England and Wales with registered company number 2366703 whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham DH1 5FJ;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

On street apparatus

41.—(2) This part of this schedule does not apply to apparatus in respect of which the relations between the undertaker and Northumbrian Water are regulated by the provision of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in stopped up streets

42.—(1) Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets, public rights of way and private means of access), if Northumbrian Water has any apparatus in the street, Northumbrian Water is entitled to the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Northumbrian Water legal easements reasonably satisfactory to Northumbrian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Northumbrian Water to require the removal of that apparatus under paragraph 45 or the power of the undertaker to carry out works under paragraph 47.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 15 (temporary stopping up and restriction of use of streets), Northumbrian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

43.—(1) The undertaker, in the case of the powers conferred by article 21 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

44.—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

45.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northumbrian Water’s apparatus is relocated or diverted, that apparatus must not be removed under this part of this schedule, and any right of Northumbrian Water to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been

provided, to the reasonable satisfaction of Northumbrian Water in accordance with sub-paragraphs 45.2 to 45.8.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northumbrian Water 56 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northumbrian Water reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph 45.3, afford to Northumbrian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for access to and the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker, after using all reasonable endeavours is unable to afford such facilities and rights as are mentioned in sub-paragraph 45.2 in the land in which the alternative apparatus or part of such apparatus is to be constructed Northumbrian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this schedule must be constructed in such manner and in such line or situation as may be agreed between Northumbrian Water and the undertaker both acting reasonably with a view to securing the efficient implementation of the necessary work, the avoidance of unnecessary delay and the continued fulfilment by both parties of their service obligations, which in the case of Northumbrian Water shall be to a standard no less than that achieved prior to the removal of the apparatus which the alternative apparatus replaces, or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) Northumbrian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to Northumbrian Water of any such facilities and rights as are referred to in sub-paragraphs 45.2 or 45.3, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this schedule.

(6) Regardless of anything in sub-paragraph 45.5, if the undertaker gives notice in writing to Northumbrian Water that the undertaker intends to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by Northumbrian Water, may, subject to the written consent of Northumbrian Water, which shall not be unreasonably withheld, and in accordance with Northumbrian Water's requirements and specifications, be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Northumbrian Water.

(7) Nothing in sub-paragraph 45.6 authorises the undertaker to execute the placing, installation bedding, packing, removal, connection or disconnection of any apparatus, or execute the filling around the apparatus (where apparatus is laid in a trench) within 300 millimetres of apparatus.

(8) When alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use all

reasonable endeavours to comply with Northumbrian Water's reasonable requests for a reasonable period of time to enable Northumbrian Water to:

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

46.—(1) Where, in accordance with the provisions of this part of this schedule, the undertaker affords to Northumbrian Water facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such reasonable terms and conditions as may be agreed between the undertaker and Northumbrian Water or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus the arbitrator must:

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker or the traffic on the highway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted and have regard to Northumbrian Water's statutory obligations.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northumbrian Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northumbrian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(4) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2016 or other legislation.

Retained apparatus

47.—(1) Not less than 56 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 45.2, the undertaker must submit to Northumbrian Water a plan, section and description of the works to be executed, together with an assessment of the impact of the works and proposed measures for the protection of Northumbrian Water's apparatus.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph 47.1 and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph 47.3 by Northumbrian Water for the alteration

or otherwise for the protection of the apparatus and of its operation, or for securing access to it, and Northumbrian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northumbrian Water under sub-paragraph 47.2 must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph 47.1 is submitted to it.

(4) If Northumbrian Water in accordance with sub-paragraph 47.3 and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 39 to 41 and 44 to 46 apply as if the removal of the apparatus had been required by the undertaker under paragraph 45.2.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph 47.1 in a case of emergency but in that case must give, to Northumbrian Water, notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph 47.2 in so far as is reasonably practicable in the circumstances.

(7) For the purposes of sub-paragraph 47.1, works are deemed to be in land near Northumbrian Water's apparatus (where it is a relevant pipe, as defined in Section 158(7) of the Water Industry Act 1991) if those works fall within the following distances measured from the edge of such apparatus:

- (a) where it is a water main
 - (i) 3 metres where the diameter of the water main is up to and including 300 millimetres;
 - (ii) 4.5 metres where the diameter of the water main is greater than 300 millimetres, up to and including 600 millimetres;
 - (iii) 6 metres where the diameter of the water main is greater than 600 millimetres; and
- (b) Where it is a sewer, 6.5 metres.

Expenses and costs

48.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northumbrian Water all costs, charges and expenses which Northumbrian Water may reasonably incur or have to pay or which it may sustain in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 45.2, including any costs reasonably incurred in connection with the acquisition of rights under paragraph 45.3 and in watching and inspecting the execution of works under paragraph 47.2 and in making reasonable requirements under paragraph 47.3.

(2) The value of any apparatus removed under the provisions of this part of this schedule is to be deducted from any sum payable under sub-paragraph 48.1, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this schedule:

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest currently available type; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated except where the placing of apparatus at a different depth is required solely to achieve an equivalent capability and function to the existing apparatus,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northumbrian Water in question by virtue of sub-paragraph 48.1 is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph 48.3:

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus;
- (b) the provision of additional manholes, valves or wash-out pipes, where required to comply with design standards, must not be treated as a placing of apparatus of better type, of greater capacity or of greater dimensions than those of the existing apparatus; and
- (c) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Northumbrian Water in respect of works by virtue of sub-paragraph 48.1, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on Northumbrian Water any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

(6) Subject to sub-paragraphs 48.7 and 48.8, if by reason or in consequence of the construction, maintenance or failure of any of the authorised development by or on behalf of the undertaker or any such works referred to in paragraphs 43, 45.2 or 47.1, or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northumbrian Water, or there is any interruption in any service provided or of any access to any apparatus, or in the supply of any goods or services, by Northumbrian Water or the performance of Northumbrian Water's functions, or any disruption to the normal operation of Northumbrian Water's apparatus resulting in an increase in the costs incurred by Northumbrian Water in performing its functions or in any loss,

damages or penalty or fines, or Northumbrian Water becoming liable to pay any amount to any third party, the undertaker must:

- (a) bear and pay on demand the cost reasonably incurred by Northumbrian Water in making good such damage or restoring the supply or service;
- (b) make reasonable compensation for any loss sustained by Northumbrian Water; and
- (c) indemnify Northumbrian Water against claims, demands, proceedings, damages, penalty or costs incurred by or recovered from Northumbrian Water,

by reason or in consequence of any such damage or interruption or disruption or Northumbrian Water becoming liable to any third party as aforesaid.

(7) The fact that any act or thing may have been done by Northumbrian Water on behalf of the undertaker or in accordance with a plan approved by Northumbrian Water or in accordance with any requirement of Northumbrian Water or under its supervision does not, subject to sub-paragraph 48.8, excuse the undertaker from liability under the provisions of sub-paragraph 48.6.

(8) Nothing in sub-paragraph 48.6 imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northumbrian Water, its officers, servants, contractors or agents.

(9) Northumbrian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(10) Any difference arising between the undertaker and Northumbrian Water under this part of this schedule must be referred to and settled by arbitration under article 42 (arbitration).

Access

49.—(1) If in consequence of the exercise of the powers conferred by the Order the access to any apparatus or land owned by Northumbrian Water and used by it for the purpose of its statutory functions is materially obstructed, the undertaker must provide such alternative means of access to that apparatus or land as will enable Northumbrian Water to maintain or use the apparatus or use the land for the purpose of its statutory functions no less effectively than was possible before the obstruction.

Co-operation

50.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northumbrian Water requires the removal of apparatus under paragraph 45.2 or Northumbrian Water makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Northumbrian Water's undertaking and Northumbrian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

(2) Where the undertaker identifies any apparatus which may belong to or be maintainable by Northumbrian Water but which does not appear on any statutory map kept for the purpose by Northumbrian Water, it shall inform Northumbrian Water of the existence and location of the apparatus as soon as reasonably practicable.

(3) Nothing in this part of this schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northumbrian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.