

THE A122 (LOWER THAMES CROSSING) DEVELOPMENT CONSENT ORDER

Summary of Written Representations

Interested Party	Northumbrian Water Limited (operating as Essex & Suffolk Water)
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- 1.1 This is a summary of the Written Representations submitted on behalf of Essex & Suffolk Water (“ESW”), the operating name in the south-east of England of Northumbrian Water Limited (ESW 3).
- 1.2 The majority of ESW’s concerns relate to the Linford Well, including the use of compulsory powers to take temporary possession of the site, the implications on ESW’s water abstraction licence, and water quality, monitoring and pollution affecting any future use of the Well for public water supply.
- 1.3 As a statutory undertaker appointed by Secretary of State for the Environment (now DEFRA) for public water supply ESW has a number of statutory obligations to fulfil, principally through provisions in the Water Industry Act 1991.
- 1.4 The Linford Well is a chalk aquifer groundwater source, located near Grays. ESW holds a valid abstraction licence under section 24A of the Water Resources Act 1991 for the Well for the purposes of public water supply and managing water levels. The Well is located within a groundwater inner Source Protection Zone (SPZ1).
- 1.5 ESW is finalising its revised draft Water Resource Management Plan 24 (“WRMP24”) for submission to DEFRA. The scheme in WRMP24 includes the construction of additional boreholes and a new groundwater treatment works to treat groundwater from the new boreholes and the existing Linford Well.
- 1.6 In 2019, ESW was informed that the Applicant wished ESW to supply water to the project to be used to operate its tunnel boring machine(s) (“TBM(s)”). One possible source of this water is the groundwater abstracted at the Linford Well. ESW has been working with the Applicant to agree terms, currently included in a draft Works Funding Agreement. The supply of water will be subject to agreement under section 55 of the Water Industry Act 1991.
- 1.7 ESW has also been in discussions with the Applicant in relation to the diversions required to ESW apparatus and protections in the dDCO. The Protective Provisions do not as drafted provide adequate protections for ESW. If the parties cannot reach agreement on these matters, ESW requires that amendments are made directly to the dDCO to protect its statutory undertaking.
- 1.8 The Book of Reference accompanying the application correctly lists Northumbrian Water Limited as the owner of plot 24-133. This plot represents the Linford Well site. The plot is included in the dDCO in Schedule 8 (Land of which only new rights etc. may be acquired) and Schedule 11 (Land of which temporary possession may be taken). This means that the Applicant would have powers to acquire rights over the site and/or take temporary possession of the site and have the potential to exclude ESW from or limit access to a licensed abstraction asset.
- 1.9 If the intention is to ensure access to a water supply for its TBMs, compulsory acquisition powers cannot be used as a means to permit the Applicant to acquire either the abstraction licence, or the water resource itself beneath the land, because neither the water nor the licence is attached to the land and so falls outside the reach of compulsory acquisition.
- 1.10 ESW requires that plot 24-133 be removed from the dDCO so that ESW remains in control of its vital asset. If not, and if agreement cannot be reached in relation to access then ESW considers that a dedicated article would be required in the dDCO to provide access, notwithstanding the general power of occupation of the plot granted by the dDCO.

- 1.11 ESW has broader concerns about the effects of construction and operation of LTC on water quality and the possibility of pollution or contamination incidents affecting the water source.
- 1.12 As WRMP24 provides for future reinstatement of the Linford Well to public potable water supply it is very important that the water quality is not affected by the works authorised by the dDCO. If the Linford Well water source suffers any detriment to its quality this could jeopardise the future use of the asset and, therefore, the security and resilience of public potable water supply of the Essex WRZ.
- 1.13 The Examining Authority's attention is drawn to Pond 10-001 which sits within SPZ1 and, therefore, from which there remains a risk, however small, of contamination of the source itself.
- 1.14 ESW needs to ensure that the LTC works do not cause any damage or harm by regular monitoring of the water quality. If a deterioration in water quality was identified while the Linford Well was in use to supply the LTC project, immediate investigation would be required to determine the cause of the issue. Given the powers available in the dDCO over plot 24-133, as with access for compliance with licence obligations, access for this type of monitoring will need to be adequately secured through the DCO if it cannot be agreed.
- 1.15 Water quality is not a matter covered by "standard" Protective Provisions for water undertakers in DCOs and the current wording of Requirement 6 (contaminated land and groundwater) in Part 1 of Schedule 2 does not assist. Evidently, were contamination to happen as a result of works by the Applicant authorised by the DCO, the cost of such remediation or alternative should rightly be borne by the Applicant.
- 1.16 There is no adequate protection for ESW for this type of loss in the dDCO including the Protective Provisions. Compensation is payable for temporary possession of its land and, under the Protective Provisions, the dDCO provides ESW with specific means of recourse against the Applicant for damage to their apparatus. However there is no protection from damage to the water resource itself. ESW's only recourse would be to bring a claim in negligence and, if the Applicant has undertaken all reasonable measures to protect the water resources, it will not have been negligent or have failed in its legal duty of care.
- 1.17 ESW is seeking a specific contractual indemnity as a means to reclaim any losses incurred as a result of impact from LTC on its water resources. This was accepted by the Secretary of State for Transport in a similar scenario in relation to Phase 1 of High Speed 2.
- 1.18 In addition to the major concerns set out above, ESW has been negotiating with the Applicant in relation to a number of other potential issues.
- 1.19 In conclusion, ESW's concerns relate to the use of compulsory powers to take temporary possession of or rights over the Linford Well site, and the implications of the LTC works on ESW's water abstraction licence at the Linford Well site, and water quality, monitoring and pollution affecting any future use of the Well for public water supply. If ESW cannot reach agreement with the Applicant on these points, it will require amendments to the dDCO, ideally in a dedicated article relating to Linford Well.

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