

**THE A122 (LOWER THAMES CROSSING) DEVELOPMENT CONSENT ORDER**

---

**Responses to CAH Action Points**

---

Interested Party	Northumbrian Water Limited (operating as Essex & Suffolk Water)
PINS Reference Number	TR010032
IP Reference Number	20035532
Document Ref.	ESW 12
Author	Winckworth Sherwood LLP
Date	31 October 2023

---

10812/74/ESW 12 - Responses  
to CAH Acti~ 4165-4615-5340  
v.1.docxArbor  
255 Blackfriars Road  
London  
SE1 9AX  
DX: 156810 London Bridge 6

T 020 7593 5000  
F 020 7593 5099  
[REDACTED]

**Winckworth**  
Sherwood

**Solicitors and  
Parliamentary Agents**

## **1. Introduction**

- 1.1 Action point 3 from CAH1 required all statutory undertakers who are Affected Persons to do the following:

*Any Affected Person (AP) statutory undertaker with any outstanding issues relating to the drafting of protective provisions or other drafting matters relevant to CA and/or TP affecting a statutory undertaker within the DCO is asked to submit those issues to the ExA, where possible with suggested alternative or additional DCO wording for consideration.*

- 1.2 Action point 2 from CAH4 required Northumbrian Water Limited (operating as Essex & Suffolk Water) (“ESW”) to do the following:

*Consider the best mechanism to mitigate/resolve various concerns within the dDCO (eg whether a Protective Provision would be preferable to amendments to potentially multiple Articles). What is considered to be a legally acceptable method of drafting?*

- 1.3 As explained in ESW’s Written Representations (REP1-265) and CAH4, the current intentions of the Applicant and ESW are to reach agreement. As has been referred to in previous submissions and hearings, ESW and the Applicant are in negotiations on two separate agreements relating to the Linford Well site: a Side Agreement incorporating a number of additional protections for ESW and relating to compulsory acquisition matters, and a Works Funding Agreement concerning works to be done at the Linford Well site to facilitate the use of the raw water for the Applicant’s tunnel boring machines (“TBMs”) which includes the form of a Section 55 Supply Agreement setting out the terms for the supply of that raw water for completion if the project is granted development consent.
- 1.4 The Applicant and ESW are due to hold a meeting on 31 October 2023, the outcome of which it is not possible to incorporate within Deadline 6 submissions. It is hoped that following this meeting ESW will have a clearer understanding of where matters stand between the parties and of the mechanism and content of the protections it requires through the Order.
- 1.5 In the event that ESW is not able to reach suitable agreements with the Applicant prior to the conclusion of the Examination process, it will need to seek adequate protections through the DCO, predominantly in protective provisions. At this stage, the list of issues ESW expects will need to be addressed are set out below.

## **2. Removal of plot 24-133**

- 2.1 As explained during CAH4, and on the basis of ESW’s oral (CAH4) and written submissions (ESW 11) that the Applicant has not made out a compelling case in the public interest, in the absence of any agreement with the Applicant in relation to this plot, ESW’s preferred mechanism for dealing with its concerns about compulsory acquisition and temporary occupation powers would be the outright removal of all powers over the Linford Well site. This means the removal of plot 24-133 from Schedule 8 and Schedule 11 to the dDCO and from sheet 24 of the Land Plans. The plot should also be removed from the Book of Reference.

### 3. Protective Provisions

- 3.1 Following CAH4, ESW has given thought to the incorporation of its protections for all its concerns within a single set of protective provisions to be included on the face of the DCO. It considers that all of its concerns, aside from the removal of plot 24-133, could be dealt with in this way and is giving careful thought to how this would need to be drafted, given that the current protective provisions included for the protection of electricity, gas, water and sewerage undertakers at Part 1 of Schedule 14 to the dDCO (“the PPs”) are inadequate in a number of areas.
- 3.2 To assist the Examining Authority, the following paragraphs set out at a summary level the key issues which would need to be addressed in a single set of bespoke protection provisions to be drafted as for the benefit of ESW only.
- 3.3 **Definition of “apparatus”** – The definition in the PPs would need to be expanded to give sufficient protection for all types of apparatus ESW uses in the relevant area. A definition similar to that included in the drafting of protective provisions for the benefit of Northumbrian Water Limited in the A1 Birtley to Coalhouse Development Consent Order 2021 (“the A1 DCO 2021 PPs”) would be sufficient for ESW’s purposes.
- 3.4 **Definition of “emergency”** – A definition of “emergency” would need to be added to the PPs. This is a key concern of ESW based on its experience in relation to previous infrastructure schemes. It is concerned that without a definition, the scope of what is said to be an emergency could be relied upon to inappropriately overcome the general requirements in the protective provisions leaving ESW inadequately protected. ESW would be content with the definition of emergency in the A1 DCO 2021 PPs.
- 3.5 **Additional provisions requiring cooperation between the Applicant and ESW** – ESW would require extra detail to be added to the PPs to provide for cooperation and consultation between the Applicant and ESW prior to the statutory notice periods included. The intention would be to encourage early information sharing and as much informal notice for ESW as possible which will allow it to better plan for the impacts of the Scheme on its statutory undertaking.
- 3.6 **Acquisition of land** – As explained and detailed at paragraph 2, ESW’s preferred mechanism to address its concerns about compulsory acquisition and temporary occupation powers would be the removal of all powers over the Linford Well site. However, if that is not considered possible by the Examining Authority, ESW would require the expansion of what is currently paragraph 6 of the PPs so as to cover, alongside the acquisition of apparatus, the acquisition of land, interests in or rights over land and temporary occupation of land. This would mean that any of these activities would require the consent of ESW. Wording similar to that in the East Anglia THREE Offshore Wind Farm Order 2017 would be suitable.
- 3.7 **Removal of apparatus** – ESW would require additional protections throughout what is currently paragraph 7 of the PPs. Wording largely based on that included in the drafting of the A1 DCO 2021 PPs would be sufficient for ESW’s purposes. Changes are needed to, among other things:
- 3.7.1 bolster protections for ESW’s access to its apparatus;
  - 3.7.2 allow ESW to request further information and require reasonable cost undertakings in relation to alternative apparatus being constructed;
  - 3.7.3 include specific issues which must be considered by the parties when seeking to agree issues relating to alternative apparatus;

- 3.7.4 set out distances within which works cannot be carried out close to ESW's apparatus; and
- 3.7.5 allow ESW to make reasonable requests for sufficient time to make network contingency arrangements or to bring matters to the attention of end users.
- 3.8 **Facilities and rights for alternative apparatus** – ESW would require what is currently paragraph 8 of the PPs to make clear that the facilities and rights referred to in this paragraph include statutory permits. Wording similar to that included in the drafting of the A1 DCO 2021 PPs would be sufficient for ESW's purposes.
- 3.9 ESW would also require further sub-paragraphs to set out further detail as to procedure when alternative apparatus is provided. Additions are needed to, among other things:
  - 3.9.1 ensure adequate access is provided to ESW;
  - 3.9.2 ensure construction of alternative apparatus is carried out to ESW's reasonable satisfaction and provide ESW with sufficient rights to inspect alternative apparatus;
  - 3.9.3 ensure ESW is provided with plans and sections of completed alternative apparatus works; and
  - 3.9.4 ensure no trees, plants and shrubs are planted too close to ESW apparatus and, notwithstanding article 6(2) of the Order, that it is placed at a depth of not less than 0.75 metres.
- 3.10 **Retained apparatus** – ESW would require additional protections throughout what is currently paragraph 9 of the PPs. Wording similar to that included in the drafting of the A1 DCO 2021 PPs would be sufficient for ESW's purposes. Changes are needed to, among other things:
  - 3.10.1 ensure ESW retains adequate access to its retained apparatus;
  - 3.10.2 require provision of sections and descriptions, alongside plans, of works to ESW; and
  - 3.10.3 make clear what is mean by “near to” ESW's apparatus.
- 3.11 **Expenses and costs** – ESW will require enhanced costs provisions through amendments to what is currently paragraphs 10 and 11, to ensure proper protection for its statutory undertaking, including removal of deductions from those costs for reasons of “betterment”. If it were not for the LTC project, ESW would not intend to replace or update the water mains etc. affected by the LTC proposals and, therefore, it should not suffer deductions from its costs on the basis of “betterment”.
- 3.12 **New provision on access** – A new provision to ensure that ESW retains adequate access to any land owned or used by it for the purpose of its statutory functions.
- 3.13 **Transfer of powers** – ESW will require sufficient written notice where the powers to construct or operate the authorised development are transferred to another party under article 8 of the DCO.
- 3.14 **Water quality** – ESW require a new protective provision to adequately alleviate its concerns regarding water quality which it set out previously to the Examination in both writing and orally. Provisions are required to, among other things:

- 3.14.1 require the Applicant to produce a Pollution Risk Plan to be developed and agreed with ESW and include details as to its scope;
  - 3.14.2 include specific detail on the stopping or reduction of abstraction if ESW reasonably considers that there is an identified risk to water quality;
  - 3.14.3 provide detail as to what should happen in the event of a pollution incident;
  - 3.14.4 provide for the sharing of information on water quality from the Applicant to ESW; and
  - 3.14.5 provide for bespoke compensation and indemnity provisions in relation to water quality issues.
- 3.15 **Use of compulsory powers** – ESW also requires a limit on the requirement to exercise its own compulsory purchase powers to circumstances where promotion by the Applicant is significantly more onerous, determined by agreement or failing that by arbitration.
- 3.16 Aside from the removal of plot 24-133 which requires deletions from the Order schedules, land plans and Book of Reference as detailed above, ESW is working on addressing the above concerns through a set of draft protective provisions to address the identified issues in a later submission.

**Winckworth Sherwood LLP**