

THE A122 (LOWER THAMES CROSSING) DEVELOPMENT CONSENT ORDER

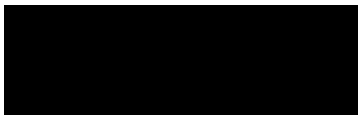
Deadline 7 Submission – Comments on Applicant’s submissions at Deadline 6

Interested Party	Northumbrian Water Limited (operating as Essex & Suffolk Water)
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The following table contains the responses of Northumbrian Water Limited (operating as Essex & Suffolk Water) ("ESW") to the Applicant's submissions at Deadline 6 of the Examination.

<u>Applicant's submission</u>	<u>Relevant text</u>	<u>ESW response</u>
<p>REP6-084</p> <p>ExQ1 -15.1.4 – s138 Statutory Undertakers' Rights and apparatus - LTC (tracked) – p11</p>	<p>Column 4 – justification for meeting s138(4) PA test:</p> <p><i>The Applicant believes that the Secretary of State can be satisfied with regard to the test in s138(4) that the extinguishment or removal is necessary for the purpose of carrying out the development to which the Order relates. The extinguishment of the relevant rights, or the removal of the relevant apparatus is required to enable the construction and operation of the A122 and other development authorised by the grant of the Order within the region of Essex and Suffolk Water / Northumbrian Water's apparatus and interests.</i></p>	<p>ESW refers to its submissions made at CAH 4 and submitted at Deadline 6 in REP 6-157 and maintains its position that the Applicant has not provided sufficient justification under s138(4) relating to plot 24-133.</p>
<p>REP6-082</p> <p>9.79 ExQ1 -15.1.3 – PA2008 s127 Statutory Undertakers' Land/Rights - LTC (tracked) P11: entry 4 ESW</p>	<p>Column 4 – justification for meeting tests in s127(3)(a) or (b):</p> <p><i>The Applicant is satisfied that the tests in s127(3)(a) or (b) are met. The tests in s127(3)(a) and/or (b) can be met by according with Articles 37 (Statutory Undertakers) and 38 (Apparatus and rights of statutory undertakers in stopped up streets) and the Protective Provisions as contained within Schedule 14 Part 1 of the draft Development Consent Order [REP5-024] or in accordance with agreements made between the Applicant and Essex and Suffolk Water / Northumbrian Water. Furthermore, the test in s127(3)(b) can be met as the application contains provisions for land to be acquired via the compulsory acquisition powers contained within the draft Development Consent Order for the benefit of Essex and Suffolk Water / Northumbrian Water new and relocated assets, and contains provisions that would enable</i></p>	<p>ESW refers to its submissions made at CAH 4 and in REP6-157 including paragraphs 3.22 - 3.24 relating to the serious detriment likely to be caused, as it does not agree that the Applicant's has sufficient justification under s127(4) regarding plot 24-133. Furthermore, in the absence of agreement, ESW's preferred position on removal of plot 24-133, or necessary controls if it is not removed, is included in ESW's deadline 7 submission on its draft protective provisions (ESW 14).</p>

<u>Applicant's submission</u>	<u>Relevant text</u>	<u>ESW response</u>
	<p><i>Essex and Suffolk Water / Northumbrian Water to carry out its statutory duties with regard to its other existing apparatus or interests that are within the Order Limits.</i></p> <p>Column 5 – justification for meeting tests in s127(6)(a) or (b):</p> <p><i>The Applicant is satisfied that the tests in s127(6)(a) or (b) are met. The tests in s127(6)(a) and/or (b) can be met by according with Articles 37 (Statutory Undertakers) and 38 (Apparatus and rights of statutory undertakers in stopped up streets) and the Protective Provisions as contained within Schedule 14 Part 1 of the draft Development Consent Order [REP5-024] or in accordance with agreements made between the Applicant and Essex and Suffolk Water / Northumbrian Water. Furthermore, the test in s127(6)(b) can be met as the application contains provisions for rights to be acquired via the compulsory acquisition powers contained within the draft Development Consent Order for the benefit of Essex and Suffolk Water / Northumbrian Water new and relocated assets, and contains provisions that would enable Essex and Suffolk Water / Northumbrian Water to carry out its statutory duties with regard to its other existing apparatus or interests that are within the Order Limits</i></p>	
<p>REP6-088</p> <p>9.130 Post-event submissions, including written submission for oral comments, for CAH 4, at para 3.4.13</p>	<p><i>In rebuttal to the position of ESW that the need for an agreement from ESW means the justification for compulsory acquisition cannot be sufficiently made out, IT noted that whilst the Applicant requires consent for works on their apparatus, this is consistent with the approach adopted in respect of other similar statutory undertakers and does not obviate the justification for compulsory acquisition. IT submitted that if this was the case, there would never be a case for including with the Order Limits compulsory acquisition powers in respect of statutory</i></p>	<p>ESW notes that the Applicant acknowledges that the protective provisions in the draft DCO ensure that ESW's apparatus cannot be acquired except by agreement, and ESW maintains its position as given in oral submissions and in its Deadline 6 response REP 6-157 at paragraphs 3.16 – to 3.24 that compulsory powers over plot 24-133 are</p>

<u>Applicant's submission</u>	<u>Relevant text</u>	<u>ESW response</u>
	<p><i>undertakers' land, where consent was required for works to their apparatus. The Applicant's position remains unchanged that it is necessary to retain the powers to lay the pipeline over plot 24-133.</i></p>	<p>unnecessary as ESW is willing to enter into an agreement, a compelling case in the public interest has not been made out and that such powers will cause serious detriment to ESW's statutory undertaking.</p> <p>Furthermore, ESW's preferred position, in the absence of agreement, on removal of plot 24-133 is included in ESW's deadline 7 submission relating to its draft protective provisions (ESW 14).</p>
<p>REP6-0889.130 Post-event submissions, including written submission for oral comments, for CAH 4, at para 3.4.14</p>	<p><i>The impact on Linford Well's water quality has been assessed and is reported in ES Appendix 14.3: Operational Service Water Drainage Pollution Risk Assessment [APP-456], and as explained in Comments on WRs Appendix B: Statutory Undertaker [REP2-047], a number of controls are provided for the benefit of ESW as outlined below:</i></p> <p><i>a. In the current iteration of the side agreement, a protective provision is provided which ensures ESW will retain access to its sites that is no less effective than prior to the exercise of temporary possession powers.</i></p> <p><i>b. The Protective Provisions in the dDCO already ensure that the Applicant cannot acquire any apparatus belonging to ESW without their prior consent.</i></p> <p><i>c. REAC commitment RDWE002, that ensures that drainage systems will be maintained in accordance with DMRB specification, to ensure</i></p>	<p>ESW would note that the assessments and commitments referred to relating to risk to the Well/source do not themselves prevent a risk, however small, from arising either during construction or operation of the LTC scheme and that ESW still requires an indemnity for loss or damage caused and, in the absence of agreement, those words are included in ESW's deadline 7 submission on its draft protective provisions.</p> <p>ESW very much hopes re paragraph (e), that following its construction and during operation of the scheme the pond above SPZ1 will have an <u>im</u>permeable lining or its fears for contamination of the well/source are likely to manifest themselves very quickly.</p>

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	<p><i>they continue to operate to their designs standard to safeguard surface and ground water quality.</i></p> <p><i>d. REAC commitment RDWE025 that secures survey and sampling of the flow regime and water quality of receiving water courses.</i></p> <p><i>e. REAC commitment RDWE032 ensures that ponds at Chadwell St Mary will include permeable lining in order to prevent seepage or drainage discharges into the ground to safeguard potable groundwater quality.</i></p>	
<p>REP6-088</p> <p>9.130 Post-event submissions, including written submission for oral comments, for CAH 4, at para 3.4.16</p>	<p><i>With respect to monitoring, IT noted that it is the Applicant's expectation that ESW would remain as the licence holder and therefore continue monitoring as required under their licence obligations; however, that is subject to further discussions on the side agreement. Regarding any cost recovery for monitoring, that is also subject to the side agreement discussions. As to the prospect of an indemnity, the principle of an indemnity in ESW's favour is accepted, and the specific scope and nature of that indemnity is a matter of ongoing discussion</i></p>	<p>ESW refers to its deadline 6 submissions (REP 6-157) at paragraph 3.30, that intention or expectation on the part of the Applicant does not provide sufficient re-assurance that exercise of compulsory powers over or temporary occupation of plot 24-133 will not interfere with ESW's ability to carry on its statutory undertaking, or to cause serious detriment to it. As set out in its Written Representations (REP 1 -265), ESW requires that it remain in control of its site. ESW also notes the Applicant's comments relating to costs of monitoring and that it accepts the need for an indemnity in ESW's favour. ESW would add that in the absence of agreement wording to that effect is included in ESW's protective provisions in its deadline 7 submission (ESW 14).</p>

<u>Applicant's submission</u>	<u>Relevant text</u>	<u>ESW response</u>
<p>REP6-088</p> <p>9.130 Post-event submissions, including written submission for oral comments, for CAH 4, at para 3.4.17</p>	<p><i>The ExA made a query regarding ESW's submission that the powers sought by the Applicant would not, in of themselves, give the Applicant a specific right to extract water. In response, IT noted that the DCO does not secure the right to extract water, rather it is anticipated and all indications lead to the conclusion that water abstraction would be agreed to between the Applicant and ESW, whether through the primary option or via the proposed alternative.</i></p>	<p>ESW notes that the Applicant confirms that it intends to reach agreement with ESW on the supply of water, which in ESW's view strengthens ESW's case that the inclusion of powers over plot 24-133 are unnecessary. ESW is willing to enter into a commercial agreement for this purpose.</p>
<p>REP6-088</p> <p>9.130 Post-event submissions, including written submission for oral comments, for CAH 4, at para 3.4.18</p>	<p><i>KH responded to the issue raised by the ExA on the potential for the Linford Well to be reinstated to the public water supply and returned no later than by 31 December 2031. KH noted that the Applicant made submissions in response to that Examining Authority's first written questions (ExQ1_Q10.4.1, responded to in [REP4-193]). KH confirmed that the Applicant considers that the use of raw water for the TBM would be concluded by 31 December 2031, regardless of whether one or two TBMs are used. The Applicant's response to ExQ2_Q10.3.1, submitted at Deadline 6 [Document Reference 9.152 Appendix F], provides more information on this matter..</i></p>	<p>ESW notes that the Applicant has confirmed in CAH4 and these submissions that it does not require water beyond the end of 2031. In the absence of agreement between the Applicant and ESW, words to secure that deadline are included in ESW's deadline 7 submission on its preferred draft protective provisions (ESW 14).</p>
<p>REP6-088</p> <p>9.130 Post-event submissions, including written submission for oral comments, for CAH 4, at para 3.4.19</p>	<p><i>The ExA further queried how this would impact upon the compulsory acquisition requirements for the land. IT responded that the Applicant did not consider that the potential reinstatement of a public water supply in 2031 would justify a specific time limit in the DCO on its compulsory powers at Linford Well, nor its use of the water supply. The Applicant has not seen any evidence that the use of Linford Well public water supply would be incompatible with the Applicant's needs, in the unlikely event that construction is not completed before 2031. This was a matter that could be addressed in further discussions with ESW.</i></p>	<p>On the basis that the Applicant has confirmed at Examination that it does not require water beyond the end of 2031, ESW maintains its position as set out in CAH 4 submissions (and included in REP 6-157) that the Applicant cannot make out a compelling case in the public interest to acquire, acquire rights over or take temporary possession of plot 24-133 or to remain in possession of or retain rights</p>

<u>Applicant's submission</u>	<u>Relevant text</u>	<u>ESW response</u>
		<p>over ESW's land beyond that date and, in the absence of agreement, words to secure that deadline are included in ESW's deadline 7 submission on its proposed draft protective provisions (ESW 14).</p>
<p>REP6-088</p> <p>9.130 Post-event submissions, including written submission for oral comments, for CAH 4, at Annex B 2.3, 2.4 and 2.5:</p>	<p><i>B.2.3 The Applicant would refer the ExA to paragraph 2.4 of ESW's Written Representation [REP1-265] which states: "ESW is also required to provide supplies for non-domestic services so long as that supply would not affect its ability to meet its existing or future obligations, or unreasonable expenditure would be incurred in meeting those obligations (sections 55-59)."</i></p> <p><i>B.2.4 Via engagement with ESW during the pre-application phase, the peak demand for the TBMs was discussed with ESW and the Applicant was assured that (subject to the relevant application and commercial agreements at the time that that supply was required) there would be sufficient capacity within the network to meet the demand requirements of the Project.</i></p> <p><i>B.2.5 The Applicant acknowledges that as a non-domestic customer, its supply provided by ESW would be subject to ESW's domestic supply duties being carried out as a priority, including the provision of water at a sufficient pressure. This is confirmed by ESW at paragraph 4.3 of its Written Representation [REP1-265]:</i></p> <p>"ESW is under the domestic supply duty contained in section 52 of the WIA [Water Industry Act] 1991 which means that domestic supply customers will always be given priority over non-domestic users. Therefore, where water for the LTC project is to be taken from a potable</p>	<p>In response to these points, ESW would refer to its Deadline 6 submission REP6-157, at paragraph 5.6 (re supply of water) which explains:</p> <p><i>In terms of 'normal' potable water supplies, then any customer is entitled to request a water supply. In a residential situation, that comes with no strings attached. In a commercial request for a non-domestic supply, as this one would be, there are caveats to the supply in that, under section 55 of the Water Industry Act, the water company is entitled to impose restrictions on the supply that govern the amount of water, for example, if that demand would place the company at risk of not being able to meet existing or future supplies to other customers. So a supply could be made available via the potable supply system and there is a process for that, but it does not guarantee that the substantial quantities the TBMs require would necessarily be available by that route.</i></p>

<u>Applicant's submission</u>	<u>Relevant text</u>	<u>ESW response</u>
	water supply, in the event of any reduction in supply (such as a burst) the supply to the project could be restricted or ceased for a period."	
<p>REP6-088</p> <p>9.130 Post-event submissions, including written submission for oral comments, for CAH 4, at Annex B 2.6 -7</p>	<p><i>B.2.6 The Applicant will continue to engage with ESW to secure a sufficient supply of water via the well-established ESW application processes. The Applicant's preferred option is to secure this via the Linford Well (Work No MUT6). Work No MU29 provides a secondary alternative option, given the caveats noted above associated with reliance on a potable water supply.</i></p> <p><i>B.2.7 Dialogue has been held with ESW over an extensive period of time and the peak supply demands of the Applicant have been shared with ESW. ESW has assessed the request in accordance with its duties and confirmed that, subject to financial agreements, and the obtaining of necessary consents for the installation of the water pipelines, that those demands could be met.</i></p>	<p>ESW would again refer to its Deadline 6 submission REP6-157, at paragraph 5.6 (re supply of water) which explains that a supply from the potable water supply is not guaranteed:</p> <p><i>In terms of 'normal' potable water supplies, then any customer is entitled to request a water supply. In a residential situation, that comes with no strings attached. In a commercial request for a non-domestic supply, as this one would be, there are caveats to the supply in that, under section 55 of the Water Industry Act, the water company is entitled to impose restrictions on the supply that govern the amount of water, for example, if that demand would place the company at risk of not being able to meet existing or future supplies to other customers. So a supply could be made available via the potable supply system and there is a process for that, but it does not guarantee that the substantial quantities the TBMs require would necessarily be available by that route.</i></p>

<u>Applicant's submission</u>	<u>Relevant text</u>	<u>ESW response</u>
<p>REP6-088</p> <p>9.130 Post-event submissions, including written submission for oral comments, for CAH 4, at Annex B 3.2- 3.10</p>	<p>The Applicant's response to the ExA's Hearing action point 4 re consideration of Compulsory Acquisition position over the Linford Borehole:</p> <p>a) Applicant's CA case having regard to the consent to abstract water</p> <p><i>B.3.2 The applicant addressed matter (a) in its Comments on WRs Appendix B: Statutory Undertakers [REP2-047]. For clarity, and expanding on that submission, the Applicant would like to separate and expand on two issues, namely: (i) the acquisition of rights to install the pipeline promoted as Work No MUT6; and, separately, (ii) the right to abstract water.</i></p> <p><i>B.3.3 On point (i), in the absence of an agreement with ESW, the Applicant is seeking compulsory powers, as a back-stop, to install the pipeline.</i></p> <p><i>B.3.4 The Applicant would refer to the SoCG between the parties [APP-107], items 2.1.1 and 2.1.2 where ESW requested all works over their land to be within the Order Limits and ESW stated that ESW "cannot lay the pipe(s) for that TBM".</i></p> <p><i>B.3.5 Although in recent submissions ESW has stated that it does indeed have sufficient powers to lay those pipes within plot 24-133, the Applicant does not consider that this changes the case for inclusion of compulsory powers. Such powers exist as a fallback to avoid any doubt over whether a connection can be created. It is commonplace for such powers to be included in DCOs, even where the statutory undertaker may have equivalent powers. It is of note that there is currently no commercial arrangement in situ that determines that ESW will exercise</i></p>	<p>Re B3.4 to 3.6, ESW has set out its position on pipe laying powers in its Deadline 6 submission, REP6-157 (at paragraph 5.9). ESW maintains its position as given in oral submissions and in its Deadline 6 response REP 6-157 at paragraphs 3.16 – to 3.24 that compulsory powers over plot 24-133 are unnecessary as ESW is willing to enter into an agreement, a compelling case in the public interest has not been made out and that such powers will cause serious detriment to ESW's statutory undertaking.</p>

<u>Applicant's submission</u>	<u>Relevant text</u>	<u>ESW response</u>
	<p><i>its powers to install the pipeline within plot 24-133 or any other plot as part of Work No MUT6. Lastly, it should be noted that ESW are protected by the Protective Provisions contained in the dDCO at Schedule 14, Part 1, and by article 37 which provides that the rights will be removed once the Project is completed.</i></p> <p><i>B.3.6 Therefore the Applicant's position is that compulsory powers are justified, but wishes to reiterate, as per item 2.1.9 of the SoCG [APP-107] and as stated in its Comments on WRs Appendix B: Statutory Undertakers [REP2-047], that the Applicant is willing to pursue an agreement to secure the delivery of these works that obviates the need to exercise compulsory acquisition powers.</i></p>	
<p>REP6-088</p> <p>9.130 Post-event submissions, including written submission for oral comments, for CAH 4, at Annex B 3.2- 3.10</p>	<p><i>B.3.7 With regard to point (ii) (the right to extract water from Linford Well), the Applicant emphasises that it is not the Applicant's case that rights over plot 24- 133 to create a pipeline secure the right to abstract water. The Applicant intends to obtain that water via a commercial arrangement with ESW utilising those provisions of ESW's existing abstraction licence.</i></p>	<p>In relation to B3.7, ESW notes that the Applicant confirms that it intends to reach agreement with ESW on the supply of water, which in ESW's view strengthens ESW's case that the inclusion of powers over plot 24-133 to lay pipes are unnecessary. ESW is willing to provide the supply of water on commercial terms. In the absence of agreement, ESW has included controls in its deadline 7 submission on its proposed protective provisions for the benefit of ESW (ESW 14).</p>

<u>Applicant's submission</u>	<u>Relevant text</u>	<u>ESW response</u>
	<p><i>B.3.8 The Applicant notes an abstraction licence under the Water Resources Act 1991 is a "prescribed consent" under section 150 of the Planning Act 2008, which is capable of being disapplied by a DCO, provided the consenting body (in this case the Environment Agency) consents to it. Importantly, it is not a requirement under section 150 of the Planning Act 2008 for the Applicant to include such a provision in its DCO. It is equally legitimate to seek abstraction rights outside of the DCO process, either by agreement or by obtaining a separate abstraction licence, should that prove to be necessary. Indeed, the Applicant has recognised this in its Consents and Agreements Position Statement [REP5-026] at Appendix A.</i></p> <p><i>B.3.9 To date, the Applicant has taken the view that agreement with ESW for the provision of water is the preferred option. As such, at this stage the Applicant has not progressed, nor developed an alternative provision to be secured via the granting of a separate abstraction licence, either as part of the dDCO or in parallel with it.</i></p>	<p>In relation to B3.8 to 3.9, in the absence of agreement, if NH do seek to obtain abstraction powers, ESW would note that under s38 of the Water Resources Act 1991 ("WRA") the Applicant would only be granted a licence taking ESW's existing licence into account and so as not to prevent ESW's abstraction (which is protected for the purposes of the Act). ESW would also note the controls in s151 of the Planning Act 2008 do not allow the Applicant to disapply s48A of the WRA which provides for claims for loss or damage to affected existing abstractions.</p>
<p>REP6-088</p> <p>9.130 Post-event submissions, including written submission for oral comments, for CAH 4, at Annex B 3.2- 3.10</p>	<p><i>B.3.10 The Applicant is confident, with regard to the consenting and installation of the pipeline within plot 24-133 and the supply of water, that these matters can be resolved via a legal agreement (referred to as the Works Funding Agreement within [REP1-265]) being agreed between the parties.</i></p>	<p>In response to the matters in paragraphs B.3.1-10 ESW has included controls and limitations on the Applicant's ability to occupy or abstract from plot 24-133 so as to protect its statutory undertaking in its deadline 7 submission proposed protective provisions for the benefit of ESW</p>
<p>REP6-088</p>	<p>(b) Applicant's CA case having regard to the resumption of potable water supply at Linford borehole from 31/12/2031</p>	<p>On the basis that the Applicant has confirmed at Examination that it does not require water</p>

<u>Applicant's submission</u>	<u>Relevant text</u>	<u>ESW response</u>
<p>9.130 Post-event submissions, including written submission for oral comments, for CAH 4, at Annex B3.11</p>	<p><i>The Applicant's position is that the period to 31 December 2031 would provide a sufficient period of availability for the supply of water from Linford borehole. The Applicant refers to its response to ExQ1_Q10.4.1 in its Responses to the Examining Authority's ExQ1 Appendix F [REP1-265], where the Applicant stated that "The Applicant believes the construction of the tunnels, which uses water supplied from the Linford Well, will be completed in advance of 31 December 2031."</i></p>	<p>beyond the end of 2031 ESW maintains its position as set out in CAH 4 submissions (and included in REP 6-157) that the Applicant cannot make out a compelling case in the public interest to acquire, acquire rights over or take temporary possession plot 24-133 or to remain in possession of or retain rights over ESW's land beyond that date and, in the absence of agreement, words to secure that deadline are included in ESW's deadline 7 submission on its proposed draft protective provisions (ESW 14).</p>
<p>REP6-053 9.3 Status of Negotiations with Statutory undertakers (Tracked) entry 14</p>	<p><i>Schedule 14, Part 1 of the draft Development Consent Order contains Protective Provisions for the Protection of Electricity, Gas, Water and Sewerage Undertakers. Discussions are ongoing regarding a separate side agreement between the Applicant and Essex and Suffolk Water, to provide further arrangements for the protection of Essex and Suffolk Water's apparatus and statutory undertaking. The latest updated version of this agreement is under discussion between Essex and Suffolk Water's legal representatives and the Applicant's solicitors with the next progress meeting to discuss matters scheduled to take place end of October/early November 2023. Points to be concluded relate to Linford Well, namely: water quality and Linford Well compulsory acquisition (plot 24-133)</i></p> <p><i>The Applicant is confident that agreement will be reached during the Examination period.</i></p>	<p>ESW would hope that agreement can be reached.</p>

<u>Applicant's submission</u>	<u>Relevant text</u>	<u>ESW response</u>
<p>REP6-112</p> <p>9.152 Responses to the Examining Authority's ExQ2 – Appendix F – 10. Road Drainage, Water Environment & Flooding</p> <p>EXQ2.Q10.3</p>	<p>'The Applicant's response to ExQ1 Q10.4.1 is noted; however, could it be extended to make comment upon the proposed two-year rephasing of the start of the construction alongside the possible use of a single TBM as opposed to two?' <i>The two-year re-phasing is not considered material as the tunnel boring machine (TBM) drives are envisaged to still finish within the proposed agreement (water supply agreement) period or, if necessary, due to unforeseen prolongation, the Applicant would either seek extension to that agreement or replace it for the remaining duration only with Gun Hill Supply. A single TBM generally reduces the intensity of the water demand; however, this does not materially alter the proposal to use water from the Linford Well nor discount the benefits of using this supply ("Work No MU29".)</i></p> <p><i>In terms of timing, although two drives using one TBM would become a sequential event, the earlier start envisaged (due to less launch works being required) results in a broadly similar end date. In any event, the supply agreement would be triggered by commencement of the relevant works and hence would move in parallel with any movement in the commencement date thus leaving the supply agreement period unaltered.</i></p>	<p>ESW notes the Applicant states that if there is an "unforeseen prolongation" they would seek an extension of the supply agreement or arrange a supply via the Gunhill main. ESW observes that neither of these commercial supplies are guaranteed, as ESW explained at CAH 4 and in its subsequent submission REP6-157 at paragraph 5.6.</p>

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