

THE A122 (LOWER THAMES CROSSING) DEVELOPMENT CONSENT ORDER

Deadline 7 submission – response to CAH4 action point 5

Interested Party	Northumbrian Water Limited (operating as Essex & Suffolk Water)
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1. Introduction

- 1.1 In response to the Examining Authority's action point 5 arising from CAH4, Northumbrian Water Limited (operating as Essex & Suffolk Water) ("ESW") sets out in this document its closing position.
- 1.2 ESW is still in negotiation with the Applicant on a side agreement in relation to its concerns raised in its Written Representations (REP1-265) concerning matters in the draft DCO, including the form of draft Protective Provisions. Negotiations also continue between the parties in relation to a related Works Funding Agreement and related supply agreement to provide for water for the tunnel boring machines.
- 1.3 In the event that the parties do not reach agreement, ESW requests that the following draft Protective Provisions for the benefit of ESW are included in the dDCO as a new part, Part 11, of Schedule 14 to the DCO, if the Secretary of State determines to make the Order. As the concerns ESW has in relation the Linford Well within plot 24-133 are unique to this draft DCO, the "standard" protective provisions in Part 1 of Schedule 14 to the draft DCO for Electricity, Gas, Water and Sewerage Undertakers do not include all the matters ESW needs to protect its statutory undertaking and related statutory obligations at that site.
- 1.4 The proposed protective provisions are based on the version within the draft Order as amended to include, first, relevant wording accepted by National Highways (and the Secretary of State) in the protective provisions for Northumbrian Water Limited included in the A1 Birtley to Coal House Development Consent Order 2021 (SI 74/2021) in Part 4 of Schedule 11 to the Order. Secondly, they include provisions to address the further matters of concern raised in ESW's Written Representations. In relation to these further matters, these Protective Provisions include bespoke provisions on which ESW comments further below.

2. Compulsory acquisition of Plot 24-133

- 2.1 ESW maintains its position within paragraphs 5.1 to 5.7 of its Written Representations (REP1-265) and as presented at CAH4 and its subsequent summary of oral submissions (REP6-157) that the Applicant has not made out a compelling case in the public interest to compulsorily acquire, acquire rights over or temporarily occupy plot 24-133, and that if it does so, ESW will suffer serious detriment to its undertaking.
- 2.2 The Protective Provisions below include two alternative paragraphs to deal with ESW's concerns on this point – see paragraph 12. ESW maintains that plot 24-133 should be removed from Schedule 8 and Schedule 11 to the dDCO and from sheet 24 of the Land Plans as well as from the Book of Reference. In the event that this plot is so removed, the first alternative paragraph 12 should be included. However, if powers remain over that plot then the second alternative paragraph 12 should be included.
- 2.3 The second version of paragraph 12 provides ESW with the necessary controls to protect its apparatus, to ensure that monitoring required under ESW's abstraction licence at the Linford well can continue to be carried out; that any exercise of powers to take temporary possession of or rights over plot 24-133 or any abstraction of water (if a further consent is sought), is carried out by agreement with ESW so that its existing

obligations can be met. It also contains provisions to limit any exercise of powers, including occupation over the plot to an agreed end date and contains obligations to vacate and remove any works from that date so that ESW can meet its obligations under its Water Resource Management Plan 2024 (“WRMP24”) to bring the Linford Well back into public water supply.

3. Water quality concerns

3.1 ESW requests that the provisions of paragraph 25 are included in order to protect the Linford Well and ESW’s statutory obligations under its abstraction licence and WRMP 2024 to bring the Well back into public water supply the principles of which are based on matters discussed with the Applicant.

3.2 As ESW has to comply with the Water Industry Act 1991 and regulations such as the Water Supply (Water Quality) Regulations in relation to the water supplied from the Linford Well, ESW needs measures to ensure that the water quality at the well is not altered by the authorised development. The clause provides for a pollution risk plan to be produced by the Applicant and agreed with ESW to ensure there are adequate protective measures and monitoring of the water quality in place to ideally prevent or detect pollution of the source and water at Linford Well. Should that occur the wording includes arrangements for notification of an incident as well as mitigation measures and further monitoring. There is also provision of compensation and indemnities for ESW should an incident occur. This wording is drafted to meet ESW’s concerns as raised in its written representations.

4. Other matters

4.1 ESW has added a definition of “commencement” to the draft protective provisions as this is not defined within the main body of the Order. Should a definition to this effect be included in article 2 of the Order, ESW is content for this to be removed.

4.2 ESW has included in paragraph 15(9) a requirement for its apparatus to be placed at a lower depth than provided for in article 6(2) as ESW needs to ensure that any water pipes or mains are sufficiently deep to avoid potential damage from frost, and the consequential escapes of water.

4.3 Bespoke arrangements for notification of any transfer of powers are included to enable ESW to adequately plan where it is to carry out any works, or to know who to contact during construction or operation, for instance if there is a pollution incident.

4.4 The further amendments in the proposed protective provisions reflect similar extended arrangements agreed with applicants relating to cooperation such as notifications on intended works and further arrangements relating to apparatus to be removed or where alternative apparatus is included and related cost and expenses arrangements.

5. Conclusion

5.1 ESW maintains its position as set out in all of its submissions to the Examination to date. ESW maintains that the Applicant has not made a compelling case in the public interest to seek compulsory powers over plot 24-133 and that serious detriment will be caused to ESW’s undertaking as a result. ESW therefore requests that, unless the

parties notify the Examining Authority (or Secretary of State) that agreement has been reached, the draft protective provisions for the benefit of ESW as set out below are included in the DCO, if it is made by the Secretary of State, in order to protect ESW's statutory obligations and statutory undertaking including the Linford Well.

Winckworth Sherwood LLP

SCHEDULE 14
PROTECTIVE PROVISIONS

Article 59

PART 1

FOR THE PROTECTION OF ESSEX AND SUFFOLK WATER

Application

1. For the protection of ESW the following provisions have effect, unless otherwise agreed in writing between the undertaker and ESW.

Interpretation

2. In this Part of this Schedule—

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

“apparatus” means—

- (a) mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations or other apparatus, structures, tunnels, shafts or treatment works or accessories (as defined in section 219(1) of the Water Industry Act 1991^(a)) belonging to or maintained or used by ESW for the purposes of water supply; and
- (b) any water mains or service pipes which are the subject to a notice of intention to adopt given under section 51A of the Water Industry Act 1991;

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “commencement” shall be construed accordingly;

“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;

(a) 1991 c. 56.

“ESW” means Northumbrian Water Limited trading as Essex and Suffolk Water, company number 02635436, whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;

“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;

“Linford Well” means ESW’s well within the land forming plot 24-133 as shown on the land plans and associated adit system

“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;

“plot 24-133” means the plot so shown on sheet 24 of the land plans and listed in the book of reference;

“NRSWA Code” means the New Roads and Street Works Act 1991 Code of Practice entitled ‘Measures Necessary where Apparatus is affected by Major Works (Diversionsary Works)’ dated June 1992 and approved by the Secretary of State on 30th June 1992 as revised and re-issued from time to time; and

“source” means source protection zone 2 for the Linford Well.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and ESW are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Consultation

4. The undertaker will at least quarterly starting on the date this Order is made update ESW on progress on the detailed design of and programme for the authorised development and will continue to consult ESW in advance of the statutory notice periods contained in the Order and the NRSWA Code.

5. The undertaker and ESW will continue to cooperate, both parties acting reasonably, to agree the matters set out in paragraph 6 in advance of any formal notification under paragraphs 13(2) and 16(1) of these protective provisions.

6. If the undertaker and ESW, after consultation in accordance with paragraphs 4 and 5 of these protective provisions, agree that any apparatus reasonably needs to be altered, replaced or diverted due to the construction of the authorised development, the undertaker must consult ESW on draft plans and sections, method statements and works programmes of the work proposed and of the proposed position of alternative apparatus to be provided or constructed for each of the apparatus affected no less than 3 months (or such other period as may be agreed between the parties acting reasonably) before serving notice in accordance with paragraph 13(2) or submitting the plan and related details required under paragraph 16(1) of these protective provisions, and—

- (1) ESW may require such modifications to be made to the plans provided under this paragraph 6 as may be reasonably necessary for the alteration, diversion or replacement of the apparatus to secure the apparatus and the remainder of ESW's undertaking as a water undertaker against interference or risk of damage and to provide and secure reasonably proper and convenient means of access to that apparatus; and
- (2) ESW may specify any necessary temporary works or other measures it believes are reasonably required for the alteration, diversion or replacement of any affected apparatus to ensure that any damage or disruption to the apparatus or interruptions or ability of ESW to meet its obligations as a statutory undertaker are minimised.

7. If the undertaker and ESW agree that some or all of the apparatus can reasonably be left in place during construction and operation of the authorised development—

- (1) suitable monitoring and protective measures shall be undertaken as reasonably required by ESW (with supervision, if given) to ensure that any damage or disruption to the apparatus or interruption to or ability of ESW to meet its obligations as statutory water undertaker is minimised; and
- (2) the undertaker will be responsible for all future maintenance liabilities in relation to any protective measures under sub-paragraph (1).

8. In default of agreement on—

- (1) whether affected apparatus has to be diverted,
- (2) the manner and line or situation of such diversion, or
- (3) any temporary works or measures

either the undertaker or ESW may refer the matter to arbitration in accordance with article 64 (arbitration) of this Order.

9. The undertaker will give ESW not less than 28 days' written notice of—

- (1) its intention to commence construction of the authorised development, and
- (2) its intention to stop up any street in which ESW has apparatus.

Apparatus in stopped up streets

10.—(1) Where any street is stopped up under article 14 (permanent stopping up of streets and private means of access), if ESW has apparatus in the street, ESW has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to ESW legal easements reasonably satisfactory to ESW in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of ESW to require the removal of that apparatus under paragraph 13 or the power of the

undertaker to carry out works under paragraph 16.

(2) Regardless of the temporary closure, alteration, diversion and restriction of use of any highway under the powers conferred by article 12 (temporary closure, alteration, diversion and restriction of use of streets), ESW 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

11. The undertaker, in the case of the powers conferred by article 20 (protective work to land and buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

12.

[Version with plot 24-133 removed from Schedules 8 and 11 and from the land plans:]

[The undertaker must not acquire any apparatus otherwise than by agreement [].]

[Or, version if powers remain over 24-133:]

[—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the Book of Reference to the Order, the undertaker must not—

- (a) acquire any apparatus;
- (b) obstruct or otherwise prevent access for monitoring at the Linford Well;
- (c) exercise powers to acquire, to acquire rights to use or take temporary possession of any land, or extinguish any rights of ESW or impose restrictive covenants over any land within Order limits belonging to ESW or
- (d) abstract water at plot 24-133

otherwise than by agreement.

(2) On 31 December 2031 or such other date as agreed in writing between the parties, the undertaker must give up possession of or otherwise vacate plot 24-133 and, unless agreed in writing between the parties, remove any authorised development works constructed upon it.

(3) After 31 December 2031 or such later date as agreed in writing between the parties, regardless of any provisions in this Order or anything shown on the land plans the undertaker must not-

- (a) acquire any apparatus;
- (b) obstruct or otherwise prevent access for monitoring at the Linford Well;
- (c) exercise powers to acquire, to acquire rights to use or take temporary possession of any land, or extinguish any rights of ESW or impose

restrictive covenants over any land within Order limits belonging to ESW,
or

- (d) abstract water at plot 24-133.]

Removal of apparatus

13.—(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 requires that ESW's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of ESW 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 ESW in accordance with sub-paragraphs (2) to (6).

(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 ESW 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 ESW reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford ESW the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for 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 (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed ESW must, subject to its requests for further information and requirement for reasonable cost undertakings 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 ESW 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 services obligations, which in the case of ESW 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 64 (arbitration).

(5) ESW must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 64, and after the grant to ESW of any such facilities and rights as are referred to in sub-paragraphs (2) or (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 (5), if the undertaker gives notice in

writing to ESW that the undertaker desires itself 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 ESW, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of ESW.

(7) Nothing in sub-paragraph 13(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) If ESW fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved.

(9) For the avoidance of doubt, any such “deemed consent” under sub-paragraph (7) does not extend to the actual undertaking of the removal works, which remains the sole responsibility of ESW or its contractors.

(10) Whenever 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 best endeavours to comply with ESW’s reasonable requests for a reasonable period of time to enable ESW 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

14.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to ESW 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 terms and conditions as may be agreed between the undertaker and ESW or in default of agreement settled by arbitration in accordance with article 64 (arbitration).

(2) 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 ESW 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 ESW as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) 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.

15.—(1) This paragraph applies to any alternative apparatus provided whether for the alteration, replacement or diversion of any apparatus under paragraphs 13 and

16 of these protective provisions.

- (2) If the undertaker acquires any land over which access to any apparatus is prevented or materially restricted or acquires any land adjoining land over which access to apparatus is prevented or materially restricted, the undertaker will grant such permanent alternative rights of access on reasonable terms for ESW and all those authorised by them at all times and for all purposes with all necessary vehicles, machinery, apparatus, equipment and materials to gain access to and egress from apparatus in such land as reasonably required to enable ESW to carry out its statutory functions, such access shall so far as reasonably practicable be no less convenient than the access enjoyed by ESW prior to acquisition.
- (3) If the undertaker temporarily occupies land or any land adjoining land in which ESW has access to or apparatus in, the undertaker will not materially obstruct access to the apparatus or so far as reasonably practicable make access to the apparatus materially less convenient than the access it enjoyed prior to the obstruction so as to restrict or limit ESW's ability to carry out its statutory functions.
- (4) Where any alternative apparatus is constructed by the undertaker—
 - (a) in order to ensure that alternative apparatus is constructed to the agreed specifications and to the reasonable satisfaction of ESW, the undertaker and ESW will cooperate to ensure that a programme is put in place prior to the commencement of the authorised development to ensure that ESW can be satisfied (with supervision, if given) that the alternative apparatus has been adequately constructed, and
 - (b) it shall be constructed in accordance with the agreed programme to the reasonable satisfaction of ESW.
- (5) An officer of ESW appointed for the purpose may, at any reasonable time and if required by the undertaker, under its supervision and control, enter upon and inspect the works to construct any alternative apparatus and may make representations to the undertaker regarding the works and may give instructions to the undertaker or such person as it may from time to time nominate about those works.
- (6) As soon as reasonably practicable after the completion of any works to construct alternative apparatus the undertaker will deliver to ESW plans and sections showing the position and level of those works as constructed.
- (7) The undertaker will ensure that no trees, shrubs or other plants are planted, as part of the works authorised by the Order, above or near or remain near to any apparatus or alternative apparatus within the Order limits.
- (8) For the purposes of sub-paragraph (7), trees, shrubs or other plants are deemed to be planted near to apparatus or alternative apparatus (where it is a 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) 3 metres where the diameter of the pipe is up to and including 300 millimetres;
 - (b) 4.5 metres where the diameter of the pipe is greater than 300 millimetres, up to and including 600 millimetres; and
 - (c) 6 metres where the diameter of the pipe is greater than 600 millimetres.

- (9) Notwithstanding article 6(2) (limits of deviation) of this Order, and unless otherwise agreed between the parties, acting reasonably, the undertaker will ensure that any apparatus diverted or replaced using powers under the Order will be placed at a depth not less than 0.75 metres.

Retained apparatus

16.—(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 (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 13(2), the undertaker must submit to ESW 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 ESW's apparatus.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by ESW for the alteration or otherwise for the protection of the apparatus and of its operation, or for securing access to it, and ESW is entitled to watch and inspect the execution of those works.

(3) Any requirements made by ESW under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) is submitted to it.

(4) If ESW in accordance with sub-paragraph (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 1 to 3 and 12 to 15 apply as if the removal of the apparatus had been required by the undertaker under paragraph 13(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 (1) in a case of emergency but in that case must give to ESW 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 (3) in so far as is reasonably practicable in the circumstances.

(7) For the purposes of sub-paragraph (1), works are deemed to be in land near ESW's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus:

- (a) 3 metres where the diameter of the pipe is up to and including 300 millimetres;
- (b) 4.5 metres where the diameter of the pipe is greater than 300 millimetres up to and including 600 millimetres; and
- (c) 6 metres where the diameter of the pipe is greater than 600 millimetres.

Expenses and costs

17.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to ESW all costs, charges and expenses which ESW may reasonably incur or have to pay or which it may sustain—

- (a) 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 13(2);
- (b) for the exercise of powers by ESW in accordance with paragraph 13(3);
- (c) in the survey of land, ESW's apparatus or works, the watching inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in these protective provisions;
- (d) in making reasonable requirements under paragraph 9(3);
- (e) in the carrying out of any connection work;
- (f) in the cutting off of any ESW's apparatus from any other apparatus or the making safe of redundant apparatus;
- (g) in the approval of plans provided by the undertaker to ESW for approval;
- (h) in the appraisal, design and carrying out of protective works; and
- (i) in carrying out additional monitoring of water quality at Linford Well for the purposes of a pollution incident.

18.—(1) Subject to sub-paragraphs (2) and (3), 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 of any such works referred to in paragraphs 6 or 13(2), 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 ESW, 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 ESW or the performance of ESW's functions or any disruption to the normal operation of ESW's apparatus resulting in an increase in the costs incurred by ESW in performing its functions or in any loss, damage or penalty or fines, or ESW becoming liable to pay any amount to any third party, the undertaker must—

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

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

- (2) The fact that any act or thing may have been done by ESW on behalf of the undertaker or in accordance with a plan approved by ESW or in accordance with

- any requirement of ESW or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless ESW fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.
- (3) Nothing in sub-paragraph (1) 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 ESW, its officers, servants, contractors or agents.
- (4) ESW 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.

Access

19.If in consequence of the exercise of the powers conferred by the Order the access to any apparatus or land owned by ESW 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 ESW 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

20. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or ESW requires the removal of apparatus under paragraph 13(2) or ESW makes requirements for the protection or alteration of apparatus under paragraph 16, the undertaker must use best 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 ESW's undertaking and ESW must use its best endeavours to co-operate with the undertaker for that purpose.

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

22. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and ESW in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

23. Any difference arising between the undertaker and ESW under this Part of this Schedule must be referred to and settled by arbitration under article [64] (arbitration).

Transfer of powers

24. Where the benefit of any powers under this Order—

- (a) to construct any part of the authorised development the construction of which has, or is likely to have, an impact on ESW's apparatus is transferred or granted to another person under article 8 (consent to transfer benefit of Order), written notice of the transfer or grant must be given to ESW at least 28 working days before the date of that transfer or grant;
- (b) is to be transferred or granted to ESW under article 8 (consent to transfer benefit of Order), written notice of the transfer or grant must be given to ESW at least 9 months before the date of that transfer or grant; and
- (c) to operate the authorised development is to be transferred or granted to another person under article 8 (consent to transfer benefit of Order), written notice of the transfer or grant must be given to ESW at least one month before the date of that transfer or grant.

Water quality

- 25.**—(1) Prior to the commencement of the construction of any part of the authorised development, the undertaker will assess the risk of pollution to the source and the Linford Well arising from the construction and operation of the authorised development and prepare a pollution risk plan.
- (2) The pollution risk plan produced under sub-paragraph (1) must (in respect of Pollution Incidents)—
- (a) establish principles and procedures; and
 - (b) identify all protective measures (including monitoring) required—
 - (i) prior to the commencement of construction of any part of the authorised development;
 - (ii) during construction of any part of the authorised development; and
 - (iii) during operation of any part of the authorised development
- in order to avoid and, if not avoided, effectively control and reduce so far as is reasonably practicable the effects of any Pollution Incident.
- (3) Within the principles and procedures referred to in sub-paragraph (2)(a), there must be included arrangements:
- (a) for recording the chemical and bacteriological composition of the water at the Linford Well prior to commencement of construction of any part of the authorised development;
 - (b) for the on-going monitoring of the water at the Linford Well during construction and operation of any part of the authorised development by ESW; and
 - (c) for the stopping or reduction of abstraction from the Linford Well if ESW reasonably considers that there is an identified risk to water quality at the Linford Well identified by any change in the chemical and bacteriological composition as recorded in paragraph (a) likely to affect potable water quality, whether caused by a Pollution Incident or not.
- (4) The undertaker must develop the pollution risk plan to be produced under sub-paragraph (1) in consultation with ESW and will agree it with ESW (such agreement not to be unreasonably withheld or delayed).

- (5) The undertaker must—
- (a) act in accordance with the Pollution Risk Plan; and
 - (b) prior to the commencement of any part of the authorised development—
 - (i) secure any necessary consents from the Environment Agency to implement any protective measures required under the pollution risk plan;
 - (ii) implement any protective measures required in accordance with sub-paragraph (2)(b);, and
 - (c) notify the Environment Agency and ESW as soon as reasonably practicable of any Pollution Incident.
- (6) Following any Pollution Incident notified to ESW and the Environment Agency under sub-paragraph (5)(c), the undertaker must—
- (a) carry out all necessary measures included in the pollution risk plan to mitigate and make good the effects of that Pollution Incident; and
 - (b) carry out any other measures and undertake any enhanced monitoring of the source and the Linford Well required by the Environment Agency based on the circumstances of the Pollution Incident, in consultation with ESW.
- (7) The undertaker will share with ESW the results of surveys, assessments and monitoring undertaken under this paragraph and ESW will have the irrevocable right to use the data for any purpose and to share such data with and sub-licence the use of such data to any third party for the purpose of protecting ESW's undertaking, Apparatus, the Linford Well and the source.
- (8) Where there has been any Pollution Incident notified to ESW under sub-paragraph (5)(c), the undertaker must—
- (a) make reasonable compensation to ESW for loss sustained by them by reason of any such Pollution Incident (which, for the avoidance of doubt shall include costs or losses incurred in producing, submitting, and agreeing a revised Water Resources Management Plan as required by the Water Industry Act 1991 Section 37A(6)), and
 - (b) indemnify ESW against claims, demands, proceedings, and damages which may be made or taken against, or recovered from ESW by reason of any such Pollution Incident (which, for the avoidance of doubt shall include claims, demands, proceedings or damages made or taken against or recovered arising from flooding or other escape of water caused by ESW being unable to run the Linford Well to waste).
- (9) For the avoidance of doubt, no provision of this paragraph permits or regulates the supply of water by ESW to the undertaker and any such arrangement is only by separate agreement between the Undertaker and ESW.
- (10) “Pollution Incident” means any incident attributable to the construction or operation of the authorised development that has the potential to affect the water quality in or from the source and the Linford Well.
- (11) Any communications required to be sent to ESW under this paragraph must be sent by email to waterresources@nwl.co.uk except in the case of a Pollution Incident notified under 7.5.4 which must be notified first by telephone to the ESW Regional Control Centre on 0800 456684 and followed up by email as soon as

reasonably practicable thereafter citing this Order.