

THE A122 (LOWER THAMES CROSSING) DEVELOPMENT CONSENT ORDER

Deadline 8 Submission – Comments on Applicant’s submissions at Deadline 7

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 7 of the Examination.

<u>Applicant's submission</u>	<u>Relevant text</u>	<u>ESW response</u>
<p>REP7-001</p> <p>9.163 National Highways Cover Letter and Submissions for Deadline 7 – p.15</p>	<p><i>Essex and Suffolk Water and the Applicant are meaningfully engaged to reach final positions on the remaining outstanding matters and will submit the SoCG as final at its next submission</i></p>	<ol style="list-style-type: none"> 1. ESW received an amended draft of the side agreement from the Applicant on 1 December. It is in the process of reviewing the changes. 2. ESW received an amended draft of the SOCG from the Applicant on 5 December. It is in the process of reviewing the changes.
<p>REP7-185</p> <p>9.174 – Applicant's response to Deadline 7 Hearing Actions – paragraphs 3.3.5 to 3.3.7</p>	<p><i>3.3.5 The Applicant notes the comments from ESW on Protective Provisions at section 3 of its response [REP6-156]. A side agreement is currently being negotiated which already incorporates the majority of the provisions referred to in section 3 and the Applicant does not consider a bespoke set of Protective Provisions to be necessary. The Examining Authority should note that the majority of amendments are already agreed or immaterial in nature. Other points e.g. betterment, water quality, use of compulsory powers, are not agreed but remain under discussion. As such, the Applicant does not propose to respond to each of ESW's comments here as they are already being discussed directly between the parties. The mechanisms of the water quality clause remain under discussion given that in the Register of Environmental Actions and Commitments (REAC) [REP6-038] the Applicant already has several commitments around water quality. The Applicant has held a meeting with ESW to</i></p>	<ol style="list-style-type: none"> 3. ESW notes the Applicant's comments on the draft protective provisions included in the dDCO. Whilst ESW acknowledges that the matters they identify are still under discussion, if there is no formal agreement between the parties then bespoke protective provisions for ESW are needed to deal with the matters ESW has raised in its Written Representations (REP1-265), at CAH4 and through its submissions more generally. 4. The standard protective provisions do not cover the fundamental matters of concern in relation to water quality and compulsory acquisition of ESW's land, are therefore not sufficiently comprehensive and do not provide ESW with protections against interference with its statutory undertaking and statutory obligations as set out in submissions during the examination. ESW has

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	<p><i>discuss the agreement recently and the draft currently sits with ESW's team.</i></p> <p><i>3.3.6 The Applicant wishes to make clear that the existing Protective Provisions in Part 1 of Schedule 14 to the draft Order [REP6-010] are reasonable and offer adequate protection to ESW in all material respects, other than on water quality which is already covered by existing REAC commitments (see 3.4.14 of [REP6-088]). The existing provisions are well precedented and adequately protect water undertakers such as ESW. For example, the definition of apparatus is adequate as it includes "other apparatus belonging to or maintained by" ESW and so would not need further amendment. Similarly, parties should be able to rely on the ordinary meaning of "emergency" as it is unreasonable to expect contractors/agents to consult the technical scope of the defined term "emergency" before being able to take immediate steps to protect apparatus or people. There is broad agreement on the cost provisions in the side agreement, but the Applicant does not agree that betterment provisions should not apply. These provisions are set out in legislation and it would be inappropriate for the Applicant to agree to set these aside to benefit ESW. It is wholly reasonable to expect a utility undertaker to pay back any betterment it receives as a result of new apparatus, in line with the statutory cost sharing regime. On the acquisition of land, the Applicant has been clear that it needs the right to take powers over the Linford Well site (see [REP6-088]).</i></p> <p><i>Overall, the Applicant is engaged in positive discussions</i></p>	<p>made submissions at multiple deadlines on the Applicant's inability to meet the statutory tests as to compulsory acquisition and the serious detriment likely to result (see Written Representations (REP1-265), Summary of Oral Submissions at Compulsory Acquisition Hearing 4 (REP6-157) and Response to CAH4 action point 5 (REP7-224)).</p> <p>5. ESW received an amended draft of the side agreement from the Applicant on 1 December. It is in the process of reviewing the changes.</p>

<u>Applicant's submission</u>	<u>Relevant text</u>	<u>ESW response</u>
	<p><i>with ESW, and progress has been made, as supported by ESW at paragraph 3.16 [REP6-156]. The Applicant hopes that an agreement can be reached prior to the close of Examination. However, should an agreement not be reached, the Applicant maintains that the Protective Provisions already within the Order provide sufficient protection to ESW.</i></p>	