

THE A122 (LOWER THAMES CROSSING) DEVELOPMENT CONSENT ORDER

Deadline 8 Submission – Comments on the Examining Authority’s Commentary on the draft Development Consent Order

Interested Party	Northumbrian Water Limited (operating as Essex & Suffolk Water)
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1. Northumbrian Water Limited (operating as Essex & Suffolk Water) (“ESW”) has considered the Examining Authority’s Commentary on the draft Development Consent Order published on 14 November 2023 (PD-047) and provides its comments on it in the table below.
2. ESW notes that although the Commentary contains specific questions, the Examining Authority has stressed at paragraph 1.1.7 that responses on other matters discussed in the Commentary are equally welcomed. With that in mind, the table below sets out either the relevant question number or relevant text of the Commentary which ESW is responding to, followed by its comments.

<u>Examination Issue</u>	<u>ESW's comments</u>
<p><u><i>QD6: Should the REAC be individually identified in Schedule 16 (certified documents)?</i></u></p> <p><u><i>QD43: Local Planning and Highway Authorities, Port Authorities and Operators, Natural England, the Environment Agency and the Marine Management Organisation as asked whether the REAC commitments are sufficiently secured. If not, what specific additional references to the REAC are required in any of the existing draft Requirements, or are any additional Requirements sought (and if so reasons for their inclusion and drafts should be provided)?</i></u></p>	<ol style="list-style-type: none"> 1. As set out during Part 1 of ISH12, ESW would support the suggestion that the REAC become a standalone document. The REAC contains commitments which relate not only to construction but also to post-construction matters. In particular, it contains commitments in relation to the pond intended to be constructed within SPZ1 for the Linford Well. 2. From a practical perspective, ESW has concerns about the ability of those dealing with the scheme during its construction and operation to find the relevant commitments within the REAC if it continues to be contained within various appendices to the CoCP. 3. ESW notes from representations made by Ms Tafur on behalf of the Applicant during Part 2 of ISH12 that the Applicant does not intend to separate the REAC from the CoCP as is suggested here but instead to rename the COCP to make it clear that it contains the REAC. 4. ESW still considers that it would be clearer in years to come

<u>Examination Issue</u>	<u>ESW's comments</u>
	to those looking for environmental commitments (especially those that endure during operation) if these were contained in a stand-alone REAC than in a document described primarily as a code of <u>construction</u> practice.
<u><i>QD12: All prospective consenting bodies subject to deemed consent provisions with a time-limit are asked to consider the appropriateness of a provision for deemed consent and of the time limit. If these are not considered to be appropriate then they are asked to explain why and how these provisions might be varied.</i></u>	<p>5. ESW notes that this question is asked in the context of deemed consent provisions in articles in the main body of the dDCO. However, the ExA will understand that such provisions are also included in the Protective Provisions in Schedule 14.</p> <p>6. In its Deadline 7 submission 'Response to CAH4 action point 5' (REP7-224), ESW submitted the Protective Provisions which it is seeking to have included in the DCO in the absence of agreement between the parties. These include ESW's preferred wording in relation to any deeming provisions.</p>
Interpretation of "begin"	<p>7. ESW does not wish to comment on QD13-QD16 which are questions for the Applicant.</p> <p>8. However, linked to the discussion of the interpretation of "begin" in the dDCO, it would note that in its Deadline 7 submission 'Response to CAH4 action point 5' (REP7-224), it included a definition of "commence" in its proposed Protective Provisions in order to provide clarity for those purposes.</p>
<u><i>QD18: The Applicant and relevant statutory undertakers are</i></u>	9. ESW does not wish to comment on QD18. However, it

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<p><u>asked to consider the effect of the remaining 'limitless' downward vertical limits of deviation. Should these be subject to a caveat limiting the materially adverse effects of downward variation to that assessed within the ES?</u></p>	<p>wishes to draw the ExA's attention to paragraph 15(9) in the proposed Protective Provisions contained in its Deadline 7 submission 'Response to CAH4 action point 5' (REP7-224). This provides that notwithstanding the permitted limits of deviation within article 6(2), and unless otherwise agreed between the Applicant and ESW, the Applicant will ensure that any ESW apparatus diverted or replaced using powers in the DCO will be placed at a depth not less than 0.75 metres.</p> <p>10. Article 6(2) as drafted would permit apparatus to be placed at a shallower depth. However, as ESW has explained to the Applicant during meetings, and highlighted at paragraph 4.2 of REP7-224, it needs to ensure that any water pipes or mains are sufficiently deep to avoid potential damage from frost, and the consequential escapes of water.</p>
<p><u>QD68: Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and purposes of the proposed acquisitions in Schedule 8 are sought from Affected Persons. Reasons for any requested amendments must be provided.</u></p>	<p>11. ESW would refer the ExA to its submissions throughout the Examination, most recently at paragraph 2.1 of REP7-224, 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.</p> <p>12. Therefore, plot 24-133 should be removed from Schedule 8.</p>
<p><u>QD71: Final submissions on the appropriateness and/ or accuracy of the proposed descriptions, extents and purposes of the proposed TP in Schedule 11 are sought. Reasons for any</u></p>	<p>13. ESW would refer the ExA to its submissions throughout the Examination, most recently at paragraph 2.1 of REP7-224, that the Applicant has not made out a compelling case in</p>

<u>Examination Issue</u>	<u>ESW's comments</u>
<u><i>requested amendments must be provided.</i></u>	<p>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.</p> <p>14. Therefore, plot 24-133 should be removed from Schedule 11.</p>
<u><i>QD78: Are the named beneficiaries of the Protective Provisions content that the provisions drafted for their benefit are appropriate and correct? If not, please explain why not.</i></u>	<p>15. ESW would refer the ExA to its Deadline 7 submission 'Response to CAH4 action point 5' (REP7-224), in which ESW submitted the Protective Provisions which it is seeking to have included in the DCO in the absence of agreement between the parties.</p> <p>16. ESW reiterates the point made at paragraph 5.1 of REP7-224 that unless the parties notify the ExA (or Secretary of State) that agreement has been reached the proposed Protective Provisions included in that document should be 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. As noted in REP7-224, 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 to provide ESW with protections against interference with its statutory undertaking and statutory obligations as set out in submissions during the examination.</p>

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