

Anglian Water Protective Provisions

At the close of Examination the following matters were listed as not agreed within the Statement of Common Ground with Anglian Water **[AS-020]**:

1. Paragraph 82, defining when NRSWA and protective provisions will apply;
2. Paragraph 89(5), Deferment of renewals; and
3. Paragraph 91, Systems and processes.

Project teams from National Highways and Anglian Water met on 10 June 2022 to try to reach agreement on these outstanding matters.

1. Paragraph 82 - NRSWA and protective provisions

The Applicant considers the wording within the dDCO **[REP10-006]** sufficiently clear as to when the 1991 Act applies and when the process within the Act would then be followed, which includes advance notice of such works where appropriate. To ensure full clarity, the parties agreed that the Applicant would provide Anglian Water with a schedule of assets, setting out for each asset within and out with the adopted highway, the power under which those works are to be undertaken. A final Schedule will be provided to Anglian Water prior to the commencement of works under the DCO. The Applicant has agreed changes to the Protective Provisions with Anglian Water as set out at the end of this section.

2. Paragraph 89(5) - Deferment of renewals

It has not been possible for the parties to reach agreement on this point, which now remains the only outstanding point in dispute.

The Applicant is of the view that the NRSWA deferment of renewal provisions should apply to the Scheme. This is because where apparatus is renewed as a result of the Scheme (e.g. through the diversion and consequent replacement of apparatus) there is a benefit to Anglian Water of having their apparatus renewed, in that they are not then required to replace the apparatus sooner than would (in a no scheme world) otherwise have been the case.

The deferment of renewal provision is the wording used in the standard protective provisions for water (and other undertakers) in Part 1 of Schedule 9 of the dDCO and is well-precedented:

- ~~[A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016](#)~~
- M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016.
- The A19/A184 Testo's Junction Alteration Development Consent Order 2018

[On A14 Cambridge to Huntingdon Improvement Scheme DCO issued in 2016 there was no deferment on Anglian Water diversions.](#)

It is also a principle found in statute. For example, the deferment of renewal provision reflects the terms of Part II of Schedule 12 of the Highways Act 1980. [The parties agree that renewal under this Schedule only applies to assets within, under or along existing highways \(like NRSWA\). There is no deferment on assets within green field locations outside of the existing highway.](#)

Anglian Waters' position is set out within the Statement of Common Ground **[REP6-012]**. In summary, Anglian Waters' position is "1. The renewal is not of Anglian Water's choosing and is required only because of the scheme. 2. Anglian Water would be paying part of the capital cost of the Highways England project when it does not have regulator approval for these costs and we cannot pass the majority of these uncompensated costs onto customers".

[Anglian Water will be making further independent submissions to the Secretary of State on the legal basis for deferment not to apply for all diversion works and the different approach being taken by National Highways to Anglian Water and other parties.](#)

The Applicant considers that the agreement to provide a clear schedule of works (as explained under discussions relating to Paragraph 82 above) will provide the basis for agreement as this

will itemise each affected apparatus, and whether NRSWA or the Protective Provisions apply. Apportionment of costs under NRSWA is clearly defined and the Applicant would seek to reach agreement on costs in line with NRSWA, except where protective provisions apply.

3. Paragraph 91 - Systems and processes

The parties have reached agreement that the initiation and then management of contract negotiations [for diversion works](#) by the Applicant does not need to be via the Anglian Water Inflow system.

Property Matters

At the meeting the parties further agreed that with reference to the Table on page 8 of the joint response to the Secretary of State may record agreement on property matters.

The applicant has agreed the following change to the Protective provisions with the DCO Application

82(1). For the protection of Anglian Water, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

(2) Before commencement of any work set out in Schedule 1 to divert any apparatus the undertaker will provide Anglian Water with a schedule of apparatus which will be diverted as part of the authorised development setting out for each piece of apparatus whether those works are to be undertaken under this Schedule or under the 1991 Act and, where a diversion is to be carried out partly under this Schedule and partly under the 1991 Act, details of which part of the diversion is to be carried out under which power.

(3) The undertaker may from time to time provide to Anglian Water amendments to the schedule referred to in paragraph (2)

(4) No amendment may be submitted under paragraph (3) in respect of apparatus which is to be diverted as part of a work set out in Schedule 1, or which comprises such a work, after that work has commenced