

This matter is being dealt with by  
Simon Hayden

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Our ref: 1.1249803.14.sh

Steve Parker – Case Officer  
Louise Evans – Case Manager  
National Infrastructure Planning  
By email

4 December 2020

Dear Sir or Madam

**M54 to M6 Link Road Draft Development Consent Order Issue specific hearing 3 – 9 December 2020**

We act for South Staffordshire Water PLC in connection with advice on the Development Consent order for the M54/M6 link road (“DCO”) and on Tuesday received the proposed agenda for the hearing that they have been invited to attend on the 9<sup>th</sup> December.

Our client’s main concern so far as the DCO is concerned is the protection of its apparatus in the location of these works so as to comply with its statutory obligation and ensure the continuous supply of water to the surrounding area. As such the protective provisions within the DCO are of most concern and we are working hard to agree these with solicitor for the Highways Authority.

Our client’s requirements are slightly different to that of other utility providers, but negotiations are progressing well at present and we are hopeful that we will be able to resolve the issues that we have. It is appreciated that some of the concerns that our client has may not apply to all utility providers and as such it is hoped that our clients concerns and requirements can be catered for in either a supplemental agreement or included within the DCO but are peculiar to our client. We attach a copy of an email that we sent to Richard Thurling at Gowlings on the 3<sup>rd</sup> December for your information.

We believe therefore that given this we do not consider that our attendance at the hearing on the 9<sup>th</sup> December is necessary at this stage, however would reserve our position and if necessary attend a later hearing if there are issues that we have not been able to resolve. However, should the Inspector have specific questions for South Staffordshire Water that are not apparent from the agenda, then please let me know and I can arrange for someone to be in attendance.

Please confirm that this is acceptable.

Yours faithfully



**Shakespeare Martineau**

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## Clare Ford

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**From:** Simon Hayden <Simon.Hayden@shma.co.uk>  
**Sent:** 03 December 2020 18:35  
**To:** Richard Thurling  
**Cc:** Christopher Neale; Toni Weston  
**Subject:** M54/M6 DCO - South Staffordshire Water Protective Provisions [EFILE-Legal02.665067.2671351] [SHMA-Active.FID3463027]

Dear Richard,

Further to the recent correspondence in relation to the above mentioned matter, I have now considered the documents attached in your previous email with my client and have the following comments to make. For ease of reference, I have taken the opportunity to set these out in full below, but also summarised at the end the broad amendments that we believe would be necessary to protect both their assets and their statutory obligation to provide water:

### **Protective Provision 4(1) – Apparatus in stopped up streets:**

Our client as a statutory undertaker cannot be left in a position where any proposed street is stopped up under Article 13 but the grant of easement is not granted in favour of the utility undertaker until many months later. Consequently, the original amendment ensures both the stopping up and grant of easement are completed at the same time to avoid the concern above and provide the rights required.

### **Protective Provision 7 - Removal of Apparatus:**

Protective Provision 7(2) – A specific timetable needs to be agreed with our client for the required removals of apparatus to take place. They are required to meet their statutory obligations, the apparatus consists of a main supply pipe that serves the surrounding area and as such the utility undertaker cannot be put in a position whereby this apparatus remains unavailable and for example it couldn't be taken out of service, even briefly during the summer months.

Protective Provision 7(5) – The rejection of our wording “*unnecessary delay*” is a cause for concern, as to our client any delay which impacts on their ability to comply with their statutory obligation cannot be agreed as they can face large penalties by their regulator.

Protective Provision 7(6) – Again given the importance of the apparatus in this location, our client cannot allow a third party to undertake the work and it would seem unlikely that a third party by doing the work would want to accept the liability for losses if they didn't undertake the work to the required standard.

### **Protective Provision 9 – Retained Apparatus:**

The apparatus that our client will lay are large diameter mains carrying vast quantities of water, therefore if works were carried out 3 metres either side of it this could impact on the support given to the main, which could allow it to burst, which in addition to damage to the locality would also mean that the supply could be cut off to the surrounding area.

Our issues with 9(7) and 9(8) follow the same point above and whilst it is accepted that emergency works may be necessary, these works could still cause the damage mentioned above and cannot be agreed as they stand. We would also point out that our client operates on a 365 day, 24/7 basis and would be available to deal with any such emergencies if necessary and obtaining their consent is unlikely to cause delay in dealing with these scenarios.

### **Protective Provision 10 – Expenses and Costs:**

Protective Provision 10(3) – There are several practical issues here that affect our client and that may not affect other utility providers. For example placing the apparatus at a greater depth would cause additional costs to be incurred as the water would then need to be pumped back to the level of the rest of the network, involving not only initial expenditure, but also on going costs of running the pump. Also, greater depth would mean additional costs of maintenance as the ground works necessary would be far greater.

In addition, some of the terminology is of concern given my clients particular industry. The terms 'better type' or 'greater capacity' are not as simple as they seem, for example what is arguably a 'better material' may have greater maintenance and installation costs and a greater capacity/dimensions may itself cause issues as it is the internal dimensions that are important

**Protective Provision 12:**

As a general and something that has not thus far been discussed in the draft protective provisions, my client states that there has not been as much cooperation from Highways England as they would have hoped. We have been told that our client's engineers have requested further information about the utility corridor, but this has not been forthcoming.

In general, it is appreciated that the protective provisions are intended to cover various utility providers and that our specific requirements may not be suited for inclusion with them, however we hope that you will appreciate that our specific requirements need to be catered for and would be willing to seek to cover them in a supplemental agreement, or specific place within the DCO.

In summary, what we are looking to secure is (a) protection for our client's apparatus in relation to any works undertaken and for a system of approvals as to the works to be done and the timing of these works to be incorporated; (b) further clarification as to the 'betterment' provisions so as to take into account the nature of our clients apparatus.

We think that these points can be negotiated between us.

Regards  
Simon

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*We are currently working remotely. Please send all correspondence to us by email except for the return of signed original documents, which should be returned as instructed. As well as emails we're available as usual over the phone and can arrange video calls.*

[REDACTED]