



# Thames Water Relevant Representations

London Luton Airport Expansion Development  
Consent Order  
Planning Inspectorate Ref: TR020001

## London Luton Airport Expansion DCO Thames Water Utilities Limited Relevant Representations

Thames Water Utilities Limited (“TWUL”) is appointed under Chapter 1 of Part II of the Water Industry Act 1991 (“WIA”) as water and sewerage undertaker for the Thames region, which includes sewerage only at the location of the London Luton Airport Expansion DCO.

In principle, TWUL does not object to the London Luton Airport scheme but has concerns relating to the increase in sewage discharge as a result of the expansion, both during and beyond the development. TWUL requires assurances that this can be delivered and managed without having a detrimental impact to TWUL’s existing customers and assets. TWUL will need to work closely with London Luton Airport (the “Applicant”) to alleviate these concerns.

TWUL owns land, sewers and other apparatus throughout and surrounding the DCO boundary that will be affected by the scheme, which will either need to be protected or diverted as a result.

TWUL does not believe that the provisions of the draft Development Consent Order (“the Order”) satisfactorily protect TWUL’s existing and future apparatus and ability to comply with its statutory duties or exercise its statutory powers. Please find TWUL’s objections (all clauses below are objected to), proposed amendments to specific provisions and additions to the protective provisions in order to alleviate the concerns below.

### General Objections:

- a) Asset Protection Review: This DCO affects TWUL sewerage assets. We would require an asset protection review prior to any works within 5 meters of our assets. This would ultimately lead to either a letter of no further comment being issued, or the affected assets being diverted.
- b) Foul Water Discharge: TWUL needs to be provided with Luton’s modelled foul water flows and needs to understand the impact of the change in these (as a result of the development) on our network. This information should be provided a minimum of 36 months before flows come in to allow for any necessary upgrades in our network. TWUL will also need to understand how wastewater from aircraft will be managed as a result of the development, with emphasis on its chemical composition, average periodic volumes and points of discharge into TWUL’s network.
- c) Surface Water Discharge: TWUL needs assurance that any surface water discharge as a result of the development will not be contaminated and will adhere to the London Plan and associated discharge hierarchy. If there is any proposed increase in surface water runoff TWUL will need to know this in advance (with the same timescales as for the foul flows).

- d) Trade Effluent Discharge: There are particular concerns as to how glycol contaminated surface water will be managed. Prior to the development, TWUL will need the trade effluent (including the discharge of glycol contaminated surface water) monitored to understand the impact the development will have on TWUL's network. Once this monitoring is established TWUL will then need to understand the proposed increase or changes to the trade effluent discharge.

Specific Objections:

*With respect to the DCO Proper:*

Section	London Luton Airport Expansion DCO Wording	TWUL Comment
Article 6(2)	<p>(2) In carrying out the authorised development the undertaker may—</p> <ul style="list-style-type: none"><li>a) in respect of the Airport Access Road works comprised in Works Nos. 6b(01), 6b(02) and 6b(03) deviate vertically from the proposed levels as shown by the proposed vertical alignment shown on sheets 1 to 4 of the Airport Access Road Highway Mainline- Indicative Plan/Profile within the Airport Access Road and Luton DART long section plans to a maximum of 2.0 metres upwards or downwards; and</li><li>b) in respect of the Luton DART works comprised in Work No. 3g deviate vertically from the proposed rail levels shown on the Indicative Luton DART Tunnel Extension – Alignment Profile within the Airport Access Road and Luton DART long section plans to a maximum of 0.5 metres upwards or 1.0 metres downwards.</li></ul>	<p>As noted above, the Applicant must be aware that the change in ground levels that are proposed and the possible deviations in Article 6 may prompt the requirement to divert assets.</p> <p>In order for TWUL to be aware of the possible diversions necessary, the Applicant must highlight where the ground level (above a TWUL asset) shall be altered beyond 300mm.</p> <p>TWUL propose to add the following clause 18 within the protective provisions, see below:</p> <p><i>“The Applicant agrees to inform the utility undertaker as soon as practically possible if they determine to alter the ground level more than 300mm within 3 metres laterally of the outside face of the asset. Subsequently the utility undertaker shall determine if a diversion is necessary.”</i></p>

<p>Article 10 &amp; 11</p>	<p>Street works</p> <p>10.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the Order limits and may—</p> <p>(a) break up or open the street, or any sewer, drain or tunnel under it; (b) tunnel or bore under the street;</p> <p>(c) place apparatus in the street;</p> <p>(d) maintain apparatus in the street or change its position; and</p> <p>(e) execute any works required for, or incidental to, any works referred to in sub-paragraphs (a) to (d).</p> <p>(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.</p> <p>(3) Subject to article 9 (application of the 1991 Act), the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).</p> <p>Power to alter layout, etc., of streets</p> <p>11.—(1) Subject to paragraphs (2) and (3), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development alter the layout of any street within the Order limits and, without limiting the scope of this paragraph, the undertaker may—</p> <p>(a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;</p>	<p>TWUL have land and asset interests in and adjoining to the DCO boundary that will be affected if streets are altered, temporarily or permanently.</p> <p>In order for TWUL to understand the impact on TWUL land and assets, TWUL would need to be fully informed of the street alterations required by the development.</p>
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	<p>(b) alter the level or increase the width of such kerb, footpath, footway, cycle track or verge; (c) reduce the width of the carriageway of the street; and</p> <p>(d) make and maintain crossovers, and passing places.</p> <p>(2) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.</p> <p>(3) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority.</p> <p>(4) If a street authority which receives an application for consent under paragraph (3) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.</p> <p>(5) Paragraphs (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being carried out.</p> <p>(6) An application for consent under paragraph (3) is deemed advance notice under section 54 of the 1991 Act where advance notice is required.</p>	
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<p>Article 14</p>	<p>Permanent stopping up of public rights of way</p> <p>14.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the public rights of way specified in column (1) of Schedule 3 (permanent stopping up of public rights of way) to the extent specified and described in column (2) of that Schedule.</p> <p>(2) Where a public right of way has been stopped up under this article—</p> <p>(a) all rights of way over or along the public right of way so stopped up are extinguished; and</p> <p>(b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the public right of way as is bounded on both sides by land owned by the undertaker.</p> <p>(3) Any person who suffers loss by the extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.</p> <p>(4) This article is subject to article 37 (apparatus and rights of statutory undertakers in stopped- up streets).</p>	<p>As noted for clause (4) of the protective provisions below, TWUL request the standard wording be reinstated and use of ‘streets’ in the place of ‘public right of way’ be retained.</p>
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<p>Article 16</p>	<p>Traffic regulation</p> <p>16.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development—</p> <ul style="list-style-type: none"> <li>(a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;</li> <li>(b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;</li> <li>(c) authorise the use as a parking place of any road;</li> <li>(d) make provision as to the direction or priority of vehicular traffic on any road; and</li> <li>(e) permit or prohibit vehicular access to any road, either at all times or at times, on days or during such periods as may be specified by the undertaker.</li> </ul> <p>(2) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (3).</p> <p>(3) The undertaker must not exercise the powers conferred by paragraph (1) unless it has— (a) given not less than—</p> <ul style="list-style-type: none"> <li>(i) 28 days' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or</li> <li>(ii) except in the case of an emergency, 14 days' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily, to the chief officer of police and to the traffic authority in whose area the road is situated;</li> </ul> <p>and</p>	<p>As stated above, TWUL have land and asset interests in the DCO boundary and surrounding area therefore TWUL will need to be fully informed of changes in traffic access required by the development.</p>
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<p>(b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention as provided for in sub- paragraph (a).</p> <p>(4) Any prohibition, restriction or other provision made by the undertaker under paragraphs (1) and (2)—</p> <p>(a) has effect as if duly made by, as the case may be—</p> <p>(i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or</p> <p>(ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces)(a) of the 1984 Act, and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and</p> <p>(b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(b).</p> <p>(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (1) at any time.</p> <p>(6) Before exercising the powers of paragraph (1) the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.</p> <p>(7) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.</p> <p>(8) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.</p>	
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	(9) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (1) the traffic authority is deemed to have granted consent.	
Article 19(1)	(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.	<p>There has been a change of wording from the standard wording from 'construction' to 'carrying out'. This new phrasing creates unnecessary ambiguity and may lead to the inclusion of the operation of the development which TWUL would object to as this should be covered in a separate agreement. TWUL require construction/standard wording to be retained as follows:</p> <p>“(1) The Undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.”</p>
Article 19(2)	(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).	<p>There have been further unnecessary changes in the wording, TWUL require that the standard wording is retained:</p> <p>“(2) Any dispute arising from the exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).”</p>

<p>Article 19(9)</p>	<p>(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.</p>	<p>TWUL requires “a person who receives an application” on behalf of the statutory undertaker to be more clearly defined as a condition of valid notice of the application. TWUL are happy to provide the correct contact details for this person to ensure the 28 day deadline can be complied with.</p>
<p>Article 19(11)</p>	<p>(11) A sewerage undertaker is deemed to have granted consent under paragraph (3) where the watercourse, public sewer or drain belongs to the sewerage undertaker and consent under section 118 of the Water Industry Act 1991 has been granted in respect of the discharge.</p>	<p>This subclause is not present in any previous DCO or TWAO due to the impossibility of its aim. TWUL, or any other statutory undertaker, is not able to consent to the discharge of Trade Effluent into watercourses, public sewers (specifically public surface water sewers) or drains under any circumstances. Trade Effluent can only be discharged to foul water sewers. Therefore, this subclause is redundant and needs to be removed.</p>

<p>Article 21</p>	<p>(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—</p> <p>(a) survey or investigate the land (including any watercourses, groundwater, static water bodies or vegetation on the land);</p> <p>(b) without limitation to the scope of sub-paragraph (a), make any excavations, trial holes, boreholes and other investigations in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil, ground water, underground structures, foundations, and plant or apparatus and remove soil and water samples and discharge water from sampling operations on to the land;</p> <p>(c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land including making any excavations or trial holes on the land for such purposes; and</p> <p>(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.</p> <p>(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land and on the Secretary of State.</p> <p>(3) Any person entering land under this article on behalf of the undertaker—</p> <p>(a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and</p> <p>(b) may take onto the land such vehicles and equipment as are necessary to carry out the surveyor investigation or to make the trial holes, boreholes or excavations.</p>	<p>Surveys are singled out in Article 21 and these works may take place far in advance of the main works. At this stage TWUL cannot determine if they may impact our assets.</p> <p>We consider the definition of 'plan' in the protective provisions Schedule 8(2) to incorporate information from surveys and therefore consider surveys to be part of the works and therefore covered by the protective provisions.</p> <p>TWUL propose the following new clause 19 within the protective provisions:</p> <p><b>“Surveys are to be considered part of the works. The Undertaker agrees to inform the utility undertaker as soon as practically possible if they intend to survey using ground intrusive methods within 3 metres laterally of the outside face of an asset. Subsequently the utility undertaker shall determine if protection of the asset is necessary”</b></p>
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	<p>(4) No trial holes, boreholes or excavations are to be made under this article—</p> <p>(a) in land located within a highway boundary without the consent of the highway authority;</p> <p>or</p> <p>(b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld or delayed.</p> <p>(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.</p> <p>(6) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—</p> <p>(a) under paragraph (4)(a) in the case of a highway authority; or</p> <p>(b) under paragraph (4)(b) in the case of a street authority, that authority will be deemed to have granted consent.</p> <p>(7) Section 13 (refusal to give permission to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act</p>	
<p>Articles 24, 27, 30 and 35</p>	<p><i>Please see DCO.</i></p>	<p>TWUL object as TWUL have assets and land within and adjoining the DCO boundary which are necessary to fulfil our statutory function. If TWUL were not to be in possession of those assets, the ability to perform TWUL's statutory function would be restricted. Furthermore, the restrictions contained in these articles should not impact TWUL's ability to access TWUL's assets or carry out TWUL's statutory function.</p>

<p>Article 36 (1)(d)</p>	<p>Subject to the provisions of Schedule 8 (protective provisions), article 27 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (2), the undertaker may— ... (d) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order land; and</p>	<p>Building over TWUL assets contravenes the building regulations that recognise that doing so interferes with TWUL’s statutory undertaking as TWUL will be unable to repair or maintain TWUL’s assets once they are built over. Therefore, the undertaker should seek to reposition TWUL’s apparatus rather than building over them.</p> <p>Therefore, TWUL object to this article and it needs to be removed.</p>
<p>Article 36 (1)(e)</p>	<p>Subject to the provisions of Schedule 8 (protective provisions), article 27 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (2), the undertaker may— ... (e) construct over existing apparatus belonging to statutory undertakers any necessary track or roadway (whether temporary or permanent) together with the right to maintain or remove the same, and install such service media under or over the existing apparatus needed in connection with the authorised development.</p>	<p>Similarly to the above, the behaviour described in (e) has the potential to damage our assets. If the Applicant damages TWUL’s assets than this will interrupt TWUL’s statutory duties.</p> <p>Therefore, TWUL object to this article and it needs to be removed.</p>

<p>Article 38</p>	<p>38.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 36 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.</p> <p>(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 36 (statutory undertakers), any person who is—</p> <p>(a) the owner or occupier of premises the drains of which communicated with that sewer; or (b) the owner of a private sewer which communicated with that sewer, is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.</p> <p>(3) This article does not have effect in relation to apparatus to which article 37 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.</p> <p>(4) In this paragraph—</p> <p>“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(b); and “public utility undertaker” means a gas, water, electricity or sewerage undertaker.</p>	<p>TWUL objects to this clause and references the objection in respect of 11(1) of the protective provisions (Schedule 8).</p>
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<p>Sch 2 Clause 13</p>	<p>(1) No part of the authorised development may commence until for that part written details of the surface and foul water drainage plan, including means of pollution control and monitoring, have been submitted and approved in writing by the relevant planning authority following consultation with the Environment Agency on matters related to its functions.</p>	<p>As utility undertakers, TWUL would need to be consulted on the drainage strategy and approve the strategy, in addition to the planning authority.</p>
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*With respect to the Protective Provisions for Sewerage Undertakers (Schedule 8)*

Clause No.	London Luton Airport Expansion DCO Wording	TWUL Comment
Sch 8 Clause (2)	“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;	TWUL considers that the definition of ‘alternative apparatus’ should include the words ‘and effective’ after the words ‘no less efficient’. Efficiency relates to cost and productivity whereas effectiveness relates to ensuring the same output. TWUL’s general duty under section 37(1) WIA refers to an ‘efficient and economical’ system and its general duty under section 94(1)(a) WIA refers to ‘effectually’ draining an area. In TWUL’s opinion, alternative apparatus could be no less efficient than the asset which it replaces i.e. it might cost the same to maintain, but may be less effective, because it does not deal with the same quantity of water/effluent. On that basis, TWUL requests an amendment to paragraph 2 accordingly so that it is consistent with TWUL’s obligations under WIA.
Sch 8 Clause 2(c)	in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply;	The definition of water apparatus in 2(c) does not refer to ‘accessories’ but to apparatus. Accessories are defined in section 219(1) WIA and constitute the parts of the apparatus that are integral to the apparatus, such as manholes, ventilating shafts, stopcocks etc. Furthermore, the definition in 2(c) does not include apparatus which may be adopted by a water undertaker under section 51A WIA.

<p>Sch 8 Clause 2 (d)</p>	<p>in the case of a sewerage undertaker—  (i) any drain or works vested in the undertaker under the Water Industry Act 1991(c);  and  (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal of works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at a future date) of that Act,  and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any inspection chambers, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;</p>	<p>In relation to the definition in 2(d), it is not clear why 2(d)(i) only covers drains and works, and 2(d)(ii) only refers to sewers. Sewers, drains and disposal works can be vested in TWUL and can also be subject to vesting under section 102(1) and section 104(1) WIA.</p> <p>TWUL proposes the following amendment to paragraphs 2(c) and (d) for the purpose of clarity and consistency with WIA:</p> <p>“(c) In the case of a utility undertaker within paragraph (c) of the definition of that term</p> <p>(i) any mains, pipes, other water apparatus or accessories (as defined in section 219 of the Water Industry Act 1991) belonging to maintained or used by the utility undertaker for the purposes of water supply: and  (ii) any water mains or service pipes which are the subject of a notice of intention to adopt under section 51A of the Water Industry Act 1991; and</p> <p>(d) in the case of a utility undertaker within paragraph (d) of the definition of that term  (i) any sewer, drain or disposal works vested in the sewerage undertaker under the Water Industry Act 1991; and  (ii) any sewer, drain or disposal works which are the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act, and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and manholes, ventilating shafts, pumps, inspection chambers or other accessories (as defined in section 219(1) of the Water</p>
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		<p>Industry Act 1991) forming part of any such sewer, drain or works, and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;"</p>
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<p>Sch 8 Clause (4)</p>	<p>Apparatus in stopped up public rights of way</p> <p>4.—(1) Where any public right of way is stopped up under article 14 (permanent stopping up of public rights of way), any utility undertaker whose apparatus is in the public right of way has the same powers and rights in respect of that apparatus in the public right of way as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.</p> <p>(2) Regardless of the temporary alteration, diversion or restriction of any street under the powers conferred by article 13 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street 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 street.</p>	<p>There has been a change of wording from the standard wording, specifically 'streets' to 'public right of way' and also a change from 'highway' to 'street' in 4(2). The reasoning behind this is unclear and significantly changes the subject matter. We request the standard wording to be used.</p> <p>“Apparatus in stopped up streets 4.—(1) Where any street is stopped up under article 14 (permanent stopping up of streets and private means of access), any utility undertaker whose apparatus is in the street 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 the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.</p> <p>(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), a utility undertaker 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.”</p>
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<p>Sch 8 Clause 7 (2)</p>	<p>(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 the utility undertaker in question 28 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 <b>a utility</b> undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker 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.</p>	<p>TWUL believe the Applicant has incorrectly inserted "a utility" in the highlighted section. This should be "an undertaker" as the powers provided in this order are for the benefit of the Applicant as undertaker.</p> <p>TWUL also requires comfort in the relevant paragraphs that the Applicant will consult about any required diversion or protection works and agree the technical solution before notice is served. Currently, the provisions are unclear and suggest that the Applicant could in practice serve only 28 days' notice of their requirements without any prior consultation or agreement as to their requirements.</p> <p>In addition to imposing a requirement to consult and agree on technical solutions before serving notice, TWUL would like to increase the notice period to <b>not less than 56 days</b>, which would at least accommodate the statutory notice period for alteration of apparatus where necessary and appears to be the standard timescale agreed with other utility undertakers.</p>
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<p>Sch 8 Clause 7(3)</p>	<p>If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker 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 the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.</p>	<p>This clause relates to rights and facilities for constructing alternative apparatus. It says that where the alternative apparatus is to be constructed elsewhere than in other land of the Applicant or if the Applicant cannot afford such rights and facilities, TWUL must, on receipt of written notice to that effect from the Applicant, as soon as reasonably practicable use reasonable endeavours to obtain the necessary facilities and rights in the land in which alternative apparatus is to be constructed.</p> <p>TWUL has statutory powers to lay, alter and maintain apparatus under sections 158 and 159 WIA as set out above. However, these powers are not unlimited in the sense that the powers are not exercisable in Crown land or in land owned by the undertakings listed in Schedule 13 WIA without consent. Furthermore, although TWUL has the power to enter land where it has served the relevant notice and that notice has expired, it is not entitled to enter land by force and landowners can refuse entry to land. This can result in having to obtain warrants of entry from Magistrates' Courts, with consequent unrecoverable costs and reputational issues.</p>
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<p>Sch 8 Clause 7(6)</p>	<p>Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question 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 the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.</p>	<p>The following amendment is necessary because if the undertaker is in a position to remove our asset without TWUL's consent or prior to providing an effective and efficient alternative this leaves the utility undertaker vulnerable to failing to discharge its own statutory obligations.</p> <p>The below text is suggested to replace this clause:  <i>“Regardless of anything in sub-paragraph (5), and subject to sub-paragraph (7), if the undertaker gives notice in writing to the utility undertaker 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, and the utility undertaker gives its consent in writing (which shall not be unreasonably withheld or delayed), that work, instead of being executed by the utility undertaker, may be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.”</i></p>
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<p>Sch 8 Clause 7(7) &amp; (8)</p>	<p>(7) If the utility undertaker 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, provided that the undertaker has first taken all reasonable steps to contact the relevant representatives of the utility undertaker in order to elicit such a response.</p> <p>(8) Any deemed approval under sub-paragraph (7) does not extend to the actual undertaking of the removal works, which remains the sole responsibility of the utility undertaker or its contractors.</p>	<p>TWUL object to this clause as deemed consent is not appropriate. Deemed consent of removal of assets has the potential to prevent TWUL from discharging its statutory obligations such as conveying sewerage or potable water. There needs to be assets or replacement assets which are operating in order for TWUL statutory duties to be fulfilled.</p>
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<p>Sch 8 Clause 8(1)</p>	<p>1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance of the utility 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 the utility undertaker or in default of agreement settled by arbitration in accordance with article 52 (arbitration).</p> <p>2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the arbitrator will—</p> <p>(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the proposed works of the undertaker; and</p> <p>(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or on the land for which the alternative apparatus is to be substituted.</p>	<p>With respect to subsection 8(1) we believe there has been a typing error and this clause should have been drafted as follows: (using London Resort’s DCO numbering)</p> <p>“Sch 10, 8(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker 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 the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 46 (arbitration).”</p> <p>In respect to subsection 8(2), the following should be added as a subsection (c):</p> <p>“(c) the arbitrator will also give effect to the statutory obligations of the utility undertaker.”</p>
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<p>Sch 8 Clause 9 (1) &amp; (5)</p>	<p>(1) Not less than 28 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 the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.</p> <p>(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 unless otherwise agreed with the utility undertaker, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.</p>	<p>Firstly, TWUL require the following underlined wording to be inserted into subsection (1):</p> <p>(1) <u>Not less than 28 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 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.</u></p> <p>These clauses refer to a 28 day notice period. 28 days is insufficient to arrange potentially significant infrastructure works. Arranging infrastructure works, including but not limited to the diversion of apparatus, can take many years to arrange. For example, the timescale for diverting apparatus includes considering the requirement to divert, considering the options for diversion, design of the preferred option, tender, procurement, construction and commissioning.</p> <p>Furthermore, the statutory notice period for laying a relevant pipe otherwise than in substitution for an existing pipe of the same description is 3 months (s159(5)(a)), and 42 days for the purpose of altering an existing pipe (s159(5)(b)). As such, depending on the required work, TWUL may have to give up to 3 months' notice to the landowner (this may not be the Applicant, as the Applicant has not arranged to acquire sufficient interest in land to accommodate diversion works) before it can exercise its powers (s159(5)). Additional notices will need to be given where works are in the street. TWUL may also have to coordinate works with local authorities/in line with</p>
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		<p>other work being undertaken in the street, which would result in further delays.</p> <p>The Applicant and TWUL’s technical departments are already in communication. TWUL believes that the timescale noted in this subclause needs to at least be able to accommodate the statutory notice periods set out in WIA, TWUL also requires comfort in the relevant paragraphs that the Applicant will consult about any required diversion or protection works and agree the technical solution before notice is served. Currently, the provisions are unclear and suggest that the Applicant could in practice serve only 28 days’ notice of their requirements without any prior consultation or agreement as to their requirements.</p> <p>In addition to imposing a requirement to consult and agree on technical solutions before serving notice, TWUL would like to increase the notice period to not less than 56 days, which would at least accommodate the statutory notice period for alteration of apparatus where necessary, and appears to be the standard timescale agreed with other statutory undertakers.</p>
<p>Sch 8 Clause 9(6)</p>	<p>The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan 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.</p>	<p>TWUL proposes this clause be removed. There should not be a situation where our assets are or may be affected without consent from TWUL. If accepted, this could lead to TWUL breaching its statutory duties as a water and sewage undertaker. In addition, there may be health and safety ramifications which at the time would be unknown or not within the capability of the undertaker or TWUL to recognise or address. The application must be properly considered and therefore consent is essential.</p>

<p>Sch 8 Clause 10 (1)</p>	<p>Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker 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 7(2).</p>	<p>Clause 10(1) relates to reimbursement by the Applicant of any 'proper and reasonable expenses' incurred by TWUL in connection with the inspection, removal, alteration or protection of any apparatus. The words 'proper and reasonable' suggest that the Applicant will challenge both the reasonableness of the expense and whether it was properly incurred.</p> <p>TWUL should also be able to recover compensation properly paid in relation to any work it carries out under the Order, as under Schedule 12 WIA it is obliged to pay compensation to landowners and business owners in relation to specific losses incurred (diminution in value of land, disturbance and loss of business profits) in exercise of its pipe laying powers under sections 158 and 159 WIA.</p> <p>In TWUL's view, the protective provisions relating to recovery of expenses should be consistent for all undertakers, should be consistent with TWUL's statutory right to recover sums under s185(5) and should cover TWUL's obligations to pay compensation under Schedule 12 WIA.</p> <p>TWUL proposes the following amendment to clause 10(1):</p> <p><b>"Subject to the following provisions of this paragraph, the undertaker must repay to the utility undertaker in question all expenses, costs and charges reasonably incurred and any compensation properly paid by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus."</b></p>
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<p>Sch 8 Clause 11(1)</p>	<p>Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), 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 a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—</p> <p>(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and</p> <p>(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,</p> <p>by reason or in consequence of any such damage or interruption.</p>	<p>TWUL has not been provided with any indemnity by the Applicant relating to damage to apparatus or alternative apparatus, property or any interruption of services or supply, despite the fact that it is also a utility undertaker whose apparatus, alternative apparatus or property could be damaged by works carried out under the Order or whose supply and services could be interrupted by reason of or in consequence of the construction, use, maintenance or failure of the authorised development.</p> <p>TWUL refer you to Silvertown DCO (Protective Provisions) – the below was inserted. TWUL require the wording for 11(1) contained in the Luton DCO to be substituted for the following: (Silvertown numbering)</p> <p>10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of any of the works referred to in paragraph 6(2), any damage is caused to any 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 a statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the Undertaker must—</p> <p>a) bear and pay the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and</p> <p>b) indemnify the statutory undertaker against all reasonable claims, penalties, demands, proceedings, costs, damages and expenses which may be made or</p>
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*Proposed new Clauses to Protective Provisions for Sewerage Undertakers (Schedule 8)*

Clause No.	Proposed Clause Wording	TWUL Comment
Sch 8 Clause 15	<p>We request that a Clause 15 be inserted:</p> <p><i>“If in consequence of the exercise of the powers conferred by this Order the access to any apparatus and/or land of the utility undertaker is obstructed the undertaker must provide such alternative means of access to that apparatus and/or land as will enable the utility undertaker to maintain or use the apparatus and/or land no less effectively than was possible before the obstruction.”</i></p>	<p>It would be useful to include an additional paragraph in this schedule to cover situations where TWUL’s access to apparatus and land is materially obstructed.</p> <p>TWUL have a number of land parcels directly adjacent to the DCO boundary which TWUL will need to continue to have access to.</p> <p>The scheme provides for accessing assets that lie within land that the undertaker is occupying, but it doesn’t make similar provisions for accessing TWUL’s assets that are situated in land that may become ‘landlocked’ or severed by the scheme or effectively so if the only other access were via a river or railway, etc. TWUL simply need the same rights for access to assets as if they were in the occupied land. This may be unnecessary, but the information provided so far is insufficient to decide.</p>

<p>Sch 8 Clause 16</p>	<p>We request that a Clause 16 be inserted:</p> <p>“At all times the undertaker shall procure that its employees, contractors and subcontractors take all reasonable and proper precautions in exercise of powers conferred by this Order to ensure that as little damage, obstruction or interference as reasonably practicable is caused to the undertaking of the utility undertaker. The undertaker shall use its reasonable endeavours during the exercise of powers conferred by this Order to ensure that such works do not cause any interruption to the exercise by the utility undertaker of its statutory functions.”</p>	<p>TWUL have a number of assets and land interests either within or adjacent to the DCO boundary that could be significantly impacted by the proposed works. As a result, TWUL require assurance that there will be limited impact to TWUL’s statutory functions.</p>
<p>Sch 8 Clause 17</p>	<p>We propose that a Clause 17 be inserted:</p> <p>Authority for the works</p> <p>(1) Any works involving the laying or construction of pipes or accessories thereto to form part of the utility undertaker’s undertaking, or inspection, adjustment, repair or alteration (including moving or removing and replacing) of such apparatus, or any works requisite for or incidental to the purpose of any such works, shall, unless otherwise agreed in writing by the utility undertaker, be undertaken pursuant to the utility undertaker’s statutory powers following the service of statutory notice of entry onto land, such notice to be served by the utility undertaker.</p>	<p>The below addition highlights that if TWUL have to use their powers then these shall be done so not through the DCO but through TWUL’s statutory powers and not through the power of the DCO. (17(1))</p> <p>(17(2)) Is there to provide comfort to the Applicant that if TWUL were to carry out works it would be done under compliance of the Protective Provisions. In addition (17(3)) again provides comfort to the Applicant concerning any works that may be carried out by TWUL.</p>



	<p>(2) In the event that utility undertaker carries out any works involving new or existing TW assets under its own statutory powers then the Protective Provisions shall apply to such works and utility undertaker covenants to observe and comply with the Protective Provisions irrespective of whether it is carrying out the works under its own statutory powers or in reliance on the powers conferred by the Order.</p> <p>(3) In the event that utility undertaker carries out any works involving new or existing utility undertaker assets under its own statutory powers but then fails to carry out those works in accordance with the Protective Provisions or within a reasonable timeframe (including in accordance with such programme for the carrying out of those works as may be agreed in writing between Highways England and utility undertaker) then this shall not prevent or otherwise prejudice the exercise of the powers to carry out the works conferred by the Order.</p>	
<p>Sch 8 Clause 18</p>	<p>We propose that a Clause 18 be inserted:</p> <p>“The Undertaker agrees to inform the utility undertaker as soon as practically possible if they determine to alter the ground level more than 300mm within 3 metres laterally of the outside face of the asset. Subsequently the utility undertaker shall determine if a diversion is necessary.”</p>	<p>As noted above, the Applicant must be aware that the change in ground levels that are proposed and the possible deviations in Article 6 may prompt the requirement to divert assets.</p> <p>In order for TWUL to be aware of the possible diversions necessary, the Applicant must highlight where the ground level (above a TWUL asset) shall be altered beyond 300mm.</p>

<p>Sch 8 Clause 19</p>	<p>We propose that a Clause 19 be inserted: “Surveys are to be considered part of the works. The Undertaker agrees to inform the utility undertaker as soon as practically possible if they intend to survey using ground intrusive methods within 3 metres laterally of the outside face of an asset. Subsequently the utility undertaker shall determine if protection of the asset is necessary”</p>	<p>Surveys are singled out in Article 21 and these works may take place far in advance of the main works. At this stage TWUL cannot determine if they may impact our assets.</p> <p>We consider the definition of ‘plan’ in the protective provisions Schedule 8(2) to incorporate information from surveys and therefore consider surveys to be part of the works and therefore covered by the protective provisions.</p>
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**It's everyone's water**