



Immingham Green Energy Terminal

9.88 Applicant's Response to Additional Submissions
received after Deadline 5

Infrastructure Planning (Examination Procedure) Rules 2010
Volume 9

August 2024

Version 1.0

Planning Inspectorate Scheme Ref: TR030008

Document Reference: TR030008/EXAM/9.88

RESPONSE TO ANGLIAN WATER'S RELEVANT REPRESENTATION

1 BACKGROUND

- 1.1 As is evident from the **draft Statement of Common Ground [REP5-047]**, Anglian Water and Air Products have been in discussions regarding Anglian Water's request for a pre-commencement requirement relating to a water resources assessment.
- 1.2 At Issue Specific Hearing 8 (ISH8) (**Written Summary of Applicant's Oral Submissions [REP5-051]**), Counsel for the Applicant confirmed that the Applicant was engaging with Anglian Water to seek clarification as to exactly what the proposed requirement was intended to regulate and why, and how that fits into the general statutory regime for the regulation of water supply. The Applicant would then assess whether such a requirement could satisfy the requisite tests for the imposition of a requirement. If agreement was not reached, the parties would need to set out their respective positions.
- 1.3 Anglian Water submitted a representation dated 22 July 2024 **[AS-145]** that (in summary) states as follows:
 - 1.3.1 Anglian Water are progressing water supply and water recycling solutions for the Project with the Project team and specifically Air Products;
 - 1.3.2 Anglian Water consider that such matters should be the subject of a water resources assessment that forms part of the Environmental Impact Assessment ("EIA") during Examination;
 - 1.3.3 Anglian Water also consider that those matters should be the subject of a requirement in the draft Development Consent Order ("DCO") – the Applicant's understanding is that Anglian Water seek a requirement that secures the submission of an updated water resources assessment to the local planning authority before commencement of the Project;
 - 1.3.4 Anglian Water's objective is to further improve the water efficiency of the Project ahead of final design and construction to sustainably manage water resources; and
 - 1.3.5 Anglian Water have sought the support of the Environment Agency and North East Lincolnshire Council ("NELC") to this approach.
- 1.4 The Applicant and Air Products do not consider that any further environmental information needs to be submitted to the Examination or that a pre-

commencement requirement would satisfy the appropriate tests. This is explained further below.

- 1.5 Whilst the Environment Agency and NELC have not indicated that they believe any such pre-commencement requirement is necessary, those parties will need to confirm their position (if the Examining Authority considered that the imposition of a requirement was appropriate, the views of those parties should be obtained).

2 PURPOSE OF THE WATER RESOURCES ASSESSMENT

- 2.1 The term “water resource assessment” is imprecise. It clearly requires an assessment of water resources, but the geographical and temporal scope of such an assessment, and its objectives, are unspecified (noting that Anglian Water is itself obliged to carry out water resource planning as part of its statutory functions). Air Products has therefore been engaging with Anglian Water on the actual information sought by Anglian Water and the purpose of seeking it.
- 2.2 In this regard, **Chapter 18: Water Use, Water Quality, Coastal Protection, Flood Risk and Drainage [APP-060]** addresses water resources and the use of water by the Project. The methodology adopted in this chapter is agreed with the Environment Agency (**Statement of Common Ground between Associated British Ports, Air Products and the Environment Agency [REP5-033]**). No further information is considered to be required for the purposes of EIA of the Project.
- 2.3 On 16 July, Anglian Water supplied the attached template for an assessment. Section 1 of the template addresses contact and site information and Sections 2 and 3 address details of the existing and proposed site supply and discharge requirements. These details have already been supplied to Anglian Water over the course of discussions with them. In addition to that baseline information, Section 4 seeks details of water efficiency measures to be adopted and “high levels of water efficiencies”. This aligns with the representation of Anglian Water **[REP5-051]** that they are seeking to further improve water efficiency. The purpose of the assessment therefore appears to be to regulate water use and efficiency.

3 REGULATION OF WATER EFFICIENCY MEASURES

- 3.1 The majority water use by and trade effluent resulting from the Project arises from the hydrogen production facility. The operation of the hydrogen production facility will be regulated by an environmental permit under the requirements of the Environmental Permitting (England and Wales) Regulations 2016 (as acknowledged in the **Consents and Agreements Position Statement [REP1-**

010). An application has been submitted to the Environment Agency by Air Products for the requisite environmental permitting regime permit.

- 3.2 Water use and supply measures are considered through the permit application and are controlled through the environmental permitting regime. As a requirement of the process, Air Products must demonstrate the use of best available techniques to prevent or minimise the use of water. Those techniques are explained in the application for the permit.
- 3.3 The use of water efficiency measures to minimise water use may have other potential impacts on the environment. For example, such measures may increase the energy use of the facility and therefore raise questions as to whether such energy use is proportionate to the benefits of further water minimisation. The optimisation of such measures therefore requires careful consideration and the appropriate body to regulate decisions on such measures is the Environment Agency, in the context of the environmental permitting regime. That regime also provides the Environment Agency with the tools to monitor the use of such measures and to take enforcement action if necessary.
- 3.4 By way of example, a typical condition of an environmental permit requires the operator to “take appropriate measures to ensure that raw materials and water are used efficiently in the activities; maintain records of raw materials and water used in the activities; review and record at least every 4 years whether there are suitable alternative materials that could reduce environmental impact or opportunities to improve the efficiency of raw material and water use; and take any further appropriate measures identified”.
- 3.5 The use of water by the Project will therefore be adequately regulated by the Environment Agency. Any further control over water use and efficiency would duplicate the existing environmental permitting regime.

4 TESTS FOR IMPOSITION OF REQUIREMENTS

- 4.1 Section 120 of the Planning Act 2008 provides that a DCO may impose requirements in connection with the development for which consent is granted.
- 4.2 Paragraph 56 of National Planning Policy Framework (“NPPF”) refers to six tests which must be satisfied for planning conditions. The relevant paragraph is set out below:

“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision-making. Conditions

that are required to be discharged before development commences should be avoided, unless there is a clear justification” (emphasis added).

- 4.3 Advice Note Fifteen, which addresses the drafting of DCOs, states that (in line with the law and policy relating to planning conditions imposed on planning permissions under the Town and Country Planning Act 1990) requirements should be “*precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects*” (paragraph 15.2).
- 4.4 The Planning Practice Guidance (“PPG”) supplements the policy set out in the NPPF and the relevant National Policy Statement. In particular, paragraph 005 Reference ID:21a-005-20190723 of the PPG states that: “*any proposed condition that fails to meet one of the 6 tests should not be used.*”

5 DEVELOPMENT CONSENT ORDER

- 5.1 To establish that the DCO ought to include a requirement as proposed by Anglian Water, the decision maker must be satisfied that each of the six tests detailed above are satisfied.
- 5.2 In terms of necessity, consideration needs to be given as to how the planning balance would be affected. Unless the planning balance would be in favour of refusal in the absence of a requirement to control a particular matter, such a requirement is not necessary (see also the Applicant’s response to the Examining Authority’s schedule of proposed changes to the Draft Development Consent Order **[TR030008/EXAM/9.91]** submitted at Deadline 6 on this issue). The planning balance is clearly not in favour of refusal in the absence of a water resources assessment being secured through a requirement.
- 5.3 In this case, the water use of the Project would be controlled through a separate regulatory regime, via the environmental permit. On that basis, any requirement to prepare and submit a water resources assessment prior to commencing works is not necessary, as such further control would result in duplication.
- 5.4 In previous submissions (**[REP2-021]** and paragraph 36 of the Applicant’s response to Action Point 6 (ISH6) **[REP3-066]**), the Applicant has drawn attention to the *Gateshead* principle whereby the decision maker should assume that any separate process or procedure will operate correctly and efficiently. That principle applies to this issue. The Secretary of State should therefore work on the assumption that the environmental permitting regime will operate correctly and effectively and does not need to be duplicated in the DCO.
- 5.5 In light of the above, the imposition of a requirement seeking the submission and approval of a water resources assessment would also be unreasonable.

The application of duplicate limitations and controls through the DCO would lead to unnecessary administrative requirements and has the potential to delay the commencement of the works, which in turn could lead to additional costs and risks for Air Products as the operator of the hydrogen production facility.

- 5.6 An unnecessary and unreasonable administrative burden would be placed on NELC as local planning authority, which has no particular expertise in water efficiency measures, and on the Environment Agency, as consultee.
- 5.7 In the worst-case scenario, Air Products could be put in a position whereby the Environment Agency require one set of water efficiency measures through the permit, but NELC require a different set of water efficiency measures through the DCO. This would be unacceptable and highlights the importance of not seeking to duplicate separate regulatory controls through the DCO.
- 5.8 It is also explained above that a requirement simply seeking a “water resources assessment” would fail the tests as being imprecise.
- 5.9 In summary, for the reasons explained above, any requirement for the submission and approval of a water resources assessment before commencement of the Project would be unnecessary, unreasonable and imprecise. Applying the NPPF, Advice Notice Fifteen and the PPG, such a requirement should not be included in the draft DCO as it fails to satisfy the requisite tests set out above.

APPENDIX 1 – ANGLIAN WATER’S TEMPLATE FOR A WATER RESOURCE ASSESSMENT

Water Resource Assessment

The need for a Water Resource Assessment

Anglian Water is committed to supporting sustainable economic growth across the East of England. However, due to the impacts of climate change and to help protect the environment, the amount of water that businesses, including Anglian Water, can abstract is reducing. This situation is reducing our ability to be flexible with new requests to supply non-domestic connections which were not planned for in the Water Resources Management Plan 2025-2050 (WRMP24).

Whilst Anglian Water are taking steps to respond to this challenge with the construction of two new reservoirs and strategic pipeline transfers, these will take time to deliver. As such it is more crucial than ever that we work together with businesses, to ensure we are aware of their water demands for growth, and that demand management and water efficiency solutions are implemented to maximise what water is available.

Whilst Anglian Water has a statutory duty to supply water for domestic purposes (e.g., drinking water, hand-basins, toilets and showers) for non-household properties (e.g., schools, hospitals, offices, shops and hairdressers), there is no legal duty to provide water for non-domestic usage (e.g., agri-food production or car washes) where it might put at risk our ability to supply water for domestic purposes. Where we can provide this, we do so to support sustainable economic growth.

To recognise this position, Anglian Water has adopted a ‘Non-Domestic Water Requests Policy’ as set out in Appendix 1. As part of this Policy, we are asking all applicants who are requesting non-domestic water (as defined above) for non-household developments and properties to complete a Water Resource Assessment, so we can better understand water demands, water efficiency measures and more effectively forecast water supply requirements.

Water Resource Assessment

We prefer to be provided with a report detailing the Water Resources Assessment, which will be used to support the planning application process, including engagement with environmental regulators. To guide this, we have set out below the information we expect to be included.

For those that already have an existing site supply and discharge, and are seeking to amend or increase this, please complete all sections 1 through 4. For those without an existing site supply and discharge, please ignore section 2.

1. Contact and site details

Applicant name	
Applicant address	
Applicant contact name	
Applicant contact email	
Applicant contact phone number	

Agent name (if applicable)	
----------------------------	--

Agent address	
Agent contact name	
Agent contact email	
Agent contact phone number	

Retailer name (if applicable)	
Retailer address	
Retailer contact name	
Retailer contact email	
Retailer contact phone number	
Water SPID	
Sewerage SPID	
Trade Effluent DPID	

Site address/location details	
Site contact name	
Site contact role	
Site contact email	
Site contact phone number	

Site type / usage	
Hours of production	
Days of production	
Peak production period	
When will your connection be required	
Number of full-time employees on site	
Project planning route and status - please provide details and timeframe	

2. Existing site supply and discharge

Non-domestic water demand	
Mains (potable) water consumption	
Annual water consumption (m ³ /year)	
Average daily water demand (m ³ /day)	
Peak daily water demand (m ³ /day)	
Peak hourly water demand (m ³ /hour)	
Borehole water consumption	
Annual water consumption (m ³ /year)	
Average daily water demand (m ³ /day)	

Peak daily water demand (m ³ /day)	
Borehole licence reference (please attach)	
Other water consumption (specify source)	
Annual water consumption (m ³ /year)	
Average daily water demand (m ³ /day)	
Peak daily water demand (m ³ /day)	
Anglian Water/site water connection location (Grid ref)	
Meter Serial Number and size	
Site water supply internal and external pipe diameters	
Site water supply pipe length to first point of use	
On-site water storage volume	
Effective water storage volume (m ³)	
Height above ground level of inlet to storage	
Storage inlet control device (ball-valve, motorised valve, etc)	
Percentage of process supplied by on-site water storage	

Trade effluent	
Total trade effluent volume (m ³ /year)	
Average daily trade effluent discharge (m ³ /day)	
Peak daily trade effluent discharge (m ³ /day)	
Trade effluent consent reference (if applicable)	
Trade effluent connection location (Grid ref)	
Trade effluent treatment plant description	
Trade effluent composition	

3. New (or additional needs) site supply and discharge requirements

Water demand	
Quantity of water requested for domestic purposes (m ³ /day)	
Quantity of water requested for non-domestic (process) purposes (m ³ /day)	
Any water required for the purposes of firefighting	
Quality of water required i.e. potable or non-potable	
Average daily demand (m ³ /day)	

Peak daily demand (i.e. the highest volume we might have to supply in a day in m ³ /day)	
Diurnal and annual profile (m ³)	
Timescales to require the water, including any 'ramping up' to the full volumes e.g. construction needs and timescales	
Trade effluent	
Total trade effluent volume (including existing if appropriate) (m ³ /year)	
Average trade effluent volume (including existing if appropriate) (m ³ /day)	
Peak trade effluent volume (including existing if appropriate) (m ³ /day)	
Project planning route and status – please provide details and timeframe	

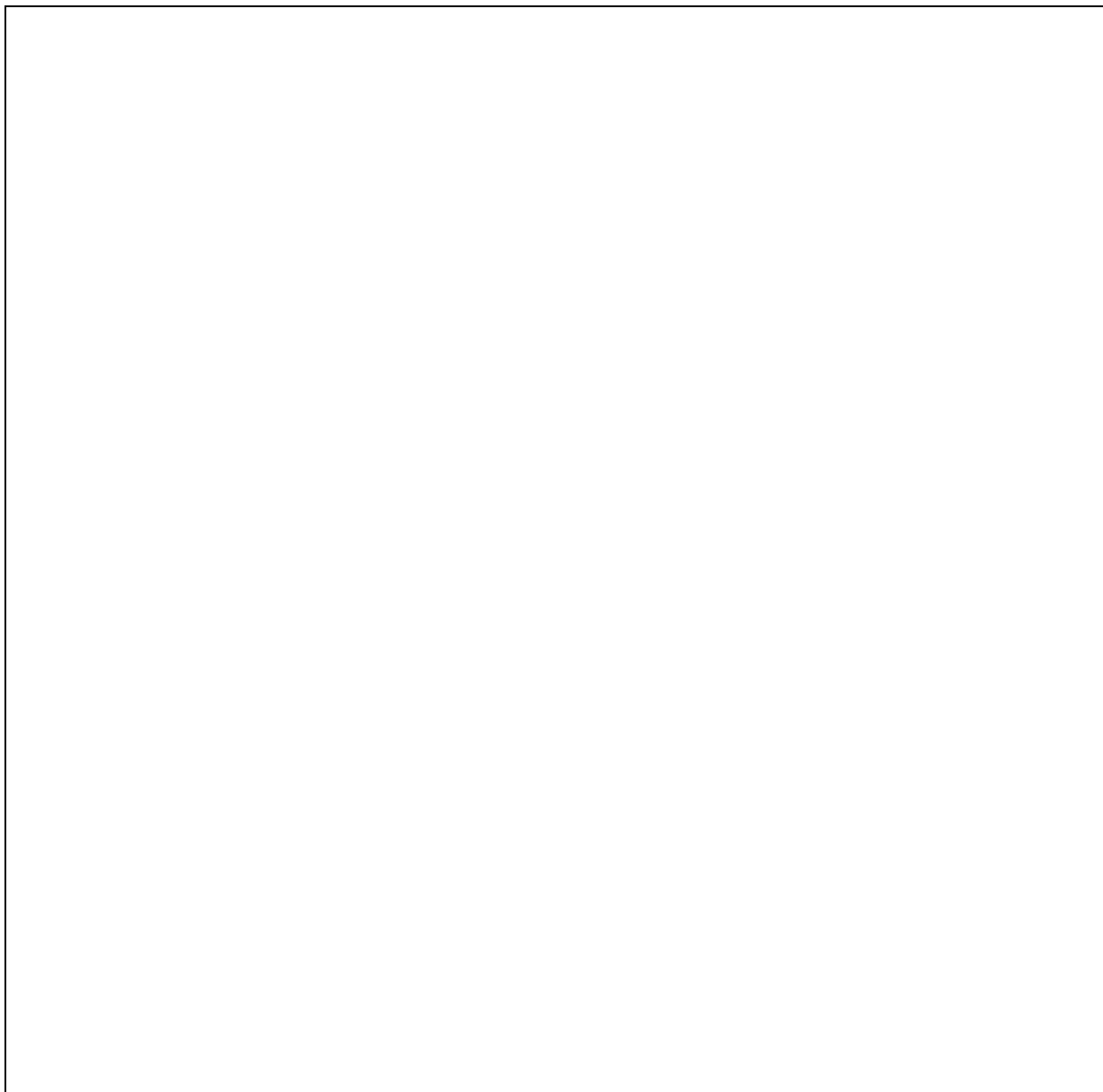
4. Water efficiency measures

As set out above, and in Anglian Water's Non-Domestic Water Requests Policy, there is a need to make best use of what water is available across the region, through implementation of water efficiency measures. We expect evidence of high levels of water efficiencies that you are considering implementing as part of your development and processes.

Potential ideas and solutions that we would want evidence on include:

- Maximisation of existing onsite resources (e.g. own borehole)
- Consideration of non-water based or close-loop cooling systems
- Capture and reuse of water from water-based cooling systems e.g. blowdown
- Sharing of resources with neighbouring facilities, considering all water-based resources such as steam, water/effluent reuse, rainwater harvesting
- Specification of highly rated white goods
- Sub-metering on site
- Evidence of water audit systems
- Infrastructure or systems that could manage the timing of water take e.g. onsite storage and control system, production flexibility
- Onsite measures to improve the water environment e.g. wetland

Please set out below what steps you have undertaken or will implement to ensure your processes and development are as water efficient as possible:



Appendix 1: Anglian Water's Non-Domestic Water Requests Policy



Anglian Water's Non-Domestic Water Requests Policy

June 2023

1.0 Executive Summary

The East of England is the driest part of the country and climate change is making summers hotter and drier. To help protect the environment, the Environment Agency (EA) is reviewing abstraction licences and reducing the amount of water that businesses including Anglian Water can abstract from the environment. As a result, **the gap between the demand for water and our supply (aka headroom) has shrunk.**

This situation is reducing our ability to be flexible with new requests to supply non-domestic connections which were not planned for in the Water Resources Management Plan (WRMP). However, where our supplies allow, we will endeavour to help businesses in whatever way we can to meet their needs and continue to serve the communities and economies they support.

To respond to both this challenge, and a growing population, Anglian Water is building a new strategic pipeline to move water around our region. We have also developed plans to build two new reservoirs to increase water supply. These solutions will take time to deliver, and so it is more crucial than ever that all homes and businesses are water efficient, to reduce the overall demand for water, to meet government targets and to ensure there is enough water to go around.

2.0 Background

2.1 Anglian Water

Anglian Water serves 20% of the total landmass of England and Wales and covers the largest geographical area of any water company. The Anglian Water region is the driest area in the country, receiving around two thirds of the average national rainfall. The population in the East of England has increased by 8.3% between 2011-2021, according to census data, which is the highest rate of growth in the UK. At Anglian Water we are committed to catering for this population growth and subsequently enabling growth in the economy. Agriculture and agri-food processing are vital industries in the East of England and require high volumes of water.

2.2 The EA's Abstraction Reduction Strategy

Water abstraction from the environment provides essential water for public water supply, agriculture and industry. However, unsustainable levels of abstraction impact the ecology and resilience of our rivers, wetlands and aquifers. Having the right flow in our rivers and protecting groundwater levels is essential to supporting healthy ecology, enhancing natural resilience to drought, and ensuring that rivers continue to support recreation and wellbeing. The Environment Agency (EA)'s abstraction reduction strategy is therefore essential for the health of our environment, but it does present some

challenges for both ourselves and other businesses, especially as changes have been made to the EA's approach since we developed our last long term water resources management plan.

We also have three public water supply groundwater licences which require closure by June 2024. A further two public water supply groundwater sources have been identified at potential risk of closure by 2030. This, as well as the other pressures on our water supply, adds even greater pressure to the gap between demand for water and our ability to supply.

2.3 Water Resource Management Plans (WRMPs)

Every 5 years water companies create a WRMP which sets out how water companies intend to achieve a secure supply of water for customers and a protected and enhanced environment. This includes consideration of which abstraction licences are being reduced or removed and predictions for requirements from new homes and businesses. There have always been requests for new or increased water connections after the WRMP has been drafted and we build in an element of flexibility into the plan for unforeseen changes. However, due to the changes in the EA's abstraction reduction strategy the number of requests received by Anglian Water for non-domestic connections has increased in the last year as business are also having their licences reduced or revoked, or simply cannot access any other source of water. At the same time we have seen new requests related to the 'onshoring' of production following Brexit and other supply chain issues, as well as new demands relating to net zero ambitions.

3.0 How can Anglian Water Help?

Anglian Water has a statutory duty to supply water for domestic purposes. This means we are legally obliged to supply water to all household properties as well as any domestic requirements (e.g., drinking water, hand-basins, toilets and showers) of non-household properties. In many cases, domestic demand will be the only requirement for non-household properties (e.g., schools, hospitals, offices, shops and hairdressers). Non-domestic demand refers to water use for industrial processes, (e.g., agri-food production or car washes), and there is no legal requirement for us to supply for this type of water usage where it might put at risk our ability to supply water for domestic purposes.

Although Anglian Water do not have a statutory obligation to supply for non-domestic purposes in these circumstances, we factor this into our WRMP and we do everything we can to support businesses in the region, with the help of the water retail market. However, as described above, the situation is now changing, due to water supply being squeezed by abstraction reduction, climate change and a fast-growing population. Therefore, where new and unplanned non-domestic requests are received, there might be the need to decline in order to protect existing supplies and the environment. However, we are always willing to provide practical support and advice on navigating the regulation and the EA's abstraction reduction strategy to businesses in our region.

4.0 What can your water retailer do to help?

The water retailer is the main point of contact for any water related issues or advice a business might need. We would always advise businesses contact them first and foremost to discuss water supply.

Water retailers can provide information, including on how to become more water efficient and make the water you already have go further.

5.0 What can businesses do to help?

The cheapest and most sustainable solution to the region's water resource problem is to collectively reduce our water consumption. Water efficiency measures can be an extremely effective way to free up water resources for business expansion or new connections. Anglian Water have an ambitious smart metering roll out programme across the region for all homes and businesses which help customers change their behaviour and become more water efficient. For our largest business customers, we offer smart meter data down to 15-minute intervals.

Water efficiency audits should be undertaken before new water supplies are requested. This could include installing water efficient devices (e.g., aerated taps and shower heads, low flush or air flush toilets) and efficient white goods (e.g., dishwashers and washing machines). Water demand can also be reduced through fitting smart meters, which measure water usage and provide regular readings, helping to identify leaks and tracking water consumption. Meters can also help support and encourage behavioural change.

In many cases, water reuse can also be a good option for reducing demand for water. Water reuse generally refers to the capture, treatment (if required) and use of alternative water supplies for non-potable purposes. It includes rainwater and surface water harvesting, greywater recycling and wastewater recycling. Water reuse technologies have the potential to save significant amounts of water, especially in situations where non potable water could be used in production.

6.0 What we need from government?

There are several things Anglian Water is calling on the government to do to help address this challenge and protect water resources:

1. Include every sector in a national campaign to reach the 20% water demand reduction (per capita) target and 9% reduction in non-household demand (by 2037/38) published in the Environment Act 2021.
2. Introduce a mandatory water efficiency labelling system for water using products, similar to the scheme already in place for energy using products.
3. Tighten building regulations and enforcement so that new homes are built to ambitious water efficient standards, as set out in the government's EIP (Environment Improvement Plan) 2023.
4. Make a commitment to link water efficiency with existing and new energy efficiency policies and retrofitting programmes.
5. Recognise the need to create new headroom to enable non-domestic growth.
6. Support us in delivering large scale strategic water resources options (for example, Anglian Water's two new reservoirs and new pipelines).