

The Planning Inspectorate
Temple Quay House
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Temple Quay
Bristol
BS1 6PN

Your Ref: EN020026
Our Ref: EYW.NOR081.72
Date: 1 May 2026

For submission by email: SouthEastAngliaLink@planninginspectorate.gov.uk

Dear Sirs

Sea Link Project - Application for Development Consent - Planning Act 2008
Reference: EN020026
Our Client: Northumbrian Water Limited
Interested Party Number: [REDACTED]

This letter follows our correspondence of 29 April 2026 regarding ongoing negotiations between Northumbrian Water Limited (“**NWL**”) and the Applicant regarding the Protective Provisions (“**PPs**”) and the associated Asset Protection Agreement (“**APA**”).

NWL received notification of the PPs the Applicant intended to include in the Deadline 7 draft DCO only after NWL had submitted its correspondence to the Planning Inspectorate at 5pm on the date of Deadline 7. Consequently, NWL had no opportunity to consider or respond to the Applicant’s proposed drafting prior to that submission.

NWL has since reviewed the Applicant’s latest proposed PPs. Those PPs are unacceptable to NWL. The Examining Authority will be aware that it and the Secretary of State must be satisfied that the statutory tests under sections 127 and 138 of the Planning Act 2008 are met having proper regard to NWL’s duties as a water undertaker. In particular, NWL is under a statutory duty to develop, maintain and operate an efficient and economical system of water supply, including the maintenance of its water mains and associated infrastructure, in order to ensure the supply of wholesome water to its customers. Section 127 requires the decision-maker to be satisfied that the powers exercised under the Order will not cause serious detriment to the carrying on of that undertaking. We would ask that the ExA carefully notes that NWL’s firm view is that the PPs in the latest form the Applicant has submitted to the ExA fails to discharge that duty.

Separately, insofar as the draft DCO makes provision for the extinguishment of rights or the removal of water mains and associated apparatus, section 138 requires a properly evidenced case that such powers are necessary for the purpose of carrying out the development, supported by robust and enforceable protective provisions. NWL’s position remains that the proposed PPs, as drafted, do not provide the safeguards required to protect the integrity, resilience, and operation of its water supply network and therefore prevent the statutory test from being satisfied.

The proposed requirement for NWL to contribute to the costs of alternative water mains and associated works arises solely as a consequence of the Applicant’s scheme and would materially undermine NWL’s ability to discharge its statutory water supply duties in the public interest.

To assist the Examining Authority, we have enclosed a track changes version to the Applicant's proposed PPs (submitted for Deadline 7) to bring those provisions in line with what we would submit as section 127 and 138 compliant drafting for the ExA.

A clean draft of NWL's ss127 and 138 compliant drafting of the PPs is also attached for ease (as originally enclosed with NWL's Deadline 7 submission). The key matters of concern are summarised below.

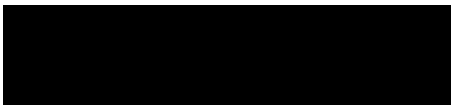
Summary of Matters of Concern

1. The requirement for ongoing three-monthly forward billing and repeated interim reconciliations (paragraphs 8.1 and 8.6) departs from established industry practice and is operationally impractical, particularly for complex diversion or protection works. NWL's proposed approach, based on an agreed project estimate and final reconciliation, provides certainty and administrative efficiency without causing material prejudice to the Applicant.
2. NWL remains concerned by provisions requiring the value of existing apparatus to be deducted from recoverable costs (paragraphs 8.2 and 8.5). The need for alternative apparatus arises solely as a consequence of the Applicant's scheme and is necessary for NWL to continue to discharge its statutory functions. Requiring NWL to absorb these costs at a time out of sync with the normal lifecycle of NWL's apparatus, could unacceptably impact customer charges or divert funding from essential network investment.
3. Paragraph 8.3 prevents recovery of additional costs where alternative apparatus is deemed to be "Materially Different" (as defined in the enclosed PP compare document). NWL's preferred definition allows appropriate flexibility to respond to site specific constraints encountered during construction, for example where apparatus must be installed at a greater depth than originally anticipated and agreed.

For the reasons set out in this letter and in previous correspondence, NWL maintains its objection to the Project on the basis that the PPs included in the draft DCO do not enable NWL to discharge its statutory duties effectively and in the public interest, that such powers as they are proposed are unnecessary and will cause serious detriment to the carrying on of NWL's statutory undertaking.

NWL remains open to continued engagement with the Applicant. However, in the absence of agreement, NWL requests that its preferred form of PPs be included in the made DCO.

Yours faithfully



Ward Hadaway LLP



wardhadaway.com

Appendix 1 – NWL's s127/138 Compliant Protective Provisions

FOR THE PROTECTION OF NORTHUMBRIAN WATER LIMITED

For the protection of NWL, the following provisions, unless otherwise agreed in writing between the undertaker and NWL, have effect.

1. In this Part of this Schedule:

“alternative apparatus”	means alternative apparatus adequate to enable NWL to fulfil its statutory functions in a manner that is no less efficient a manner than previously afforded to NWL and in all respects reasonably convenient to NWL including any reasonably necessary protective works for the apparatus;
“apparatus”	<p>means the following items belonging to or maintained by NWL within the Order limits:</p> <p>a. in the case of NWL's water undertaking:</p> <p>(i) mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations or other apparatus, structure, tunnel, shaft or treatment works or “accessories” (as defined in section 219(1) of the Water Industry Act 1991) belonging to or maintained or used by NWL for the purposes of water supply; and</p> <p>(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>b. in the case of NWL's sewerage undertaking:</p> <p>(i) any sewer, drain or disposal works vested in NWL under the Water Industry Act 1991; and</p> <p>(ii) any sewer, drain or disposal works which is so vested or is 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 any manholes, ventilating shafts, pumps or other accessories (as defined in section 219(1) of the Water Industry Act 1991) forming part of any such sewer, drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;</p>
“functions”	includes powers and duties;

"in"	in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;
"Material Difference"	the placing of alternative apparatus of a type or capacity or of those dimensions or at a depth which is other than that agreed pursuant to paragraph 5.2 or as determined by arbitration in accordance with article 62 (arbitration) to be necessary, save where the placing of such apparatus in such manner and form and in such location is in accordance with those details reasonably given rise to by conditions on site and "Materially Different" shall be construed accordingly
"NWL"	means Northumbrian Water Limited, company number 02366703, whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;
"plan"	includes sections, drawings, specifications and method statements; and
"the standard protection strips"	means strips of land falling within the following distances to either side of the medial line of any relevant pipe or apparatus: <ul style="list-style-type: none"> a. 2.25 metres where the diameter of the pipe is less than 150 millimetres; b. 3 metres where the diameter of the pipe is between 150 and 450 millimetres; c. 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; d. 6 metres where the diameter of the pipe exceeds 750 millimetres; and e. 6.5 metres where it is a sewer.
"undertaker"	means National Grid Electricity Transmission PLC

2. **Compulsory acquisition**

- 2.1. The undertaker must not without express written agreement of NWL exercise any power conferred by article 24 (compulsory acquisition of land) or article 25 (compulsory acquisition of rights) to acquire any of NWL's interests (such agreement not to be unreasonably withheld or delayed).
- 2.2. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration extension, relocation or removal shall take place until NWL has established to its reasonable satisfaction, without unnecessary delay, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

- 2.3. Regardless of any provision in the Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for NWL to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, with the agreement of NWL, create a new right for NWL to use, keep, inspect, renew and maintain the apparatus in a manner that is no less efficient than has previously been afforded to NWL, and which in all respects is reasonably convenient for NWL such agreement not to be unreasonably withheld or delayed.

3. **Protection Strips**

- 3.1. The undertaker must not within the standard protection strips interfere with or build over or under any apparatus within the Order limits or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, the placement of protection slabs or execute any filling around the apparatus within the standard protection strips unless otherwise agreed in writing with NWL, such agreement not to be unreasonably withheld or delayed and being subject to paragraph 3.2 below, and this provision must be brought to the attention of any contractor responsible for carrying out any part of the authorised development on behalf of the undertaker.

- 3.2. Where written agreement to undertake works within the standard protection strips is sought under this paragraph 3.2 NWL may request such further information as is reasonably necessary to understand the impact of the works proposed and provide approval under paragraph 3.1 PROVIDED THAT:

3.2.1. Any request for further information is made within 15 Working Days of NWL receiving notification of the proposed works; and

3.2.2. NWL must either reasonably agree to the proposed works or provide reasons for its failure to agree to the proposed works within 25 Working Days, or within 10 Working Days of receipt of all further information requested pursuant to paragraph 3.2.1 (whichever is later).

3.2.3. For the avoidance of doubt nothing in this paragraph 3.2 shall be construed as a deemed approval from NWL for works to be carried out within the standard protection strips of NWL's apparatus.

4. **Alteration of NWL Apparatus**

- 4.1. Without prejudice to the generality of the foregoing, the alteration, extension, removal or re-location of any apparatus shall not be implemented until:

4.1.1. any requirement for any permits under the Environmental Permitting Regulations 2016 or other replacement legislation and any other associated consents are obtained;

4.1.2. if applicable, the undertaker has made the appropriate application under sections 106 (right to communicate with public sewers), 112 (requirement that proposed drain or sewer be constructed so as to form part of the general system) or 185 (duty to move pipes, etc. in certain cases) of the Water Industry Act 1991 as may be required by those provisions and has provided a plan of the works proposed to NWL and NWL has given the

necessary consent or approval under the relevant provision, such agreement not to be unreasonably withheld or delayed; and

- 4.1.3. in the event that such works are to be executed by the undertaker, they are to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by NWL for the alteration or otherwise for the protection and maintenance of the apparatus, or for securing access to it.
- 4.2. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will reasonably enable NWL to maintain or use the apparatus.
- 4.3. The undertaker, in the case of the powers conferred by the Order for the protective work to buildings, must exercise those powers so as not to obstruct any reasonable means of access to any apparatus belonging to NWL.
- 4.4. Without prejudice to paragraph 2.2 hereof if, in the exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that NWL's apparatus is altered, relocated or diverted, that apparatus must not be altered, removed, and any right of NWL to maintain or access that apparatus in that land must not be extinguished, until
 - 4.4.1. alternative apparatus has been constructed and is in operation to the reasonable satisfaction of NWL; and
 - 4.4.2. facilities and rights have been secured for that alternative apparatus in accordance with paragraph 5.1.

5. **Alternative apparatus**

- 5.1. Without prejudice to the generality of the foregoing and subject always to the provisions of paragraph 4.1 hereof, if, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under the Order, the undertaker requires the removal of any of NWL's apparatus placed in that land, the undertaker must give to NWL no less than 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 an undertaker reasonably needs to remove any of its apparatus) the undertaker must, afford to NWL the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of and emergency access to that apparatus such works for completion and the commissioning and operation of such apparatus to be complete to the reasonable satisfaction of NWL in advance of the removal of NWL's existing apparatus.
- 5.2. Any alternative apparatus to be constructed in land of the undertaker pursuant to the terms hereof must be constructed in such manner and in such line or situation as may be agreed between NWL and the undertaker.
- 5.3. If NWL notifies the undertaker that it desires the undertaker 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 must be executed by the undertaker without

unnecessary delay under the superintendence and to the reasonable satisfaction of NWL.

- 5.4. Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use best endeavours to comply with NWL's reasonable requests for a reasonable period of time to enable NWL to:
 - 5.4.1. make network contingency arrangements; or
 - 5.4.2. bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.
- 5.5. Where, in accordance with the terms of the Order, the undertaker affords to NWL facilities and rights for the construction, maintenance in and access to land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted.
- 5.6. If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of NWL less favourable on the whole to NWL than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the undertaker must make provision for the payment of compensation by the undertaker to NWL as is reasonable having regard to all the circumstances.
- 5.7. Such facilities and rights as are set out in the preceding paragraphs 5.1, 5.5 or 5.6 are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2010 or other legislation.

6. **Stopping up**

- 6.1. Where in pursuance of the powers conferred by the Order any street is stopped up (permanent stopping up and restriction of use of streets and private means of access), where NWL has apparatus in the street or accessed by virtue of that street, it 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 NWL legal easements reasonably satisfactory to NWL in respect of such apparatus and access to it.
- 6.2. Regardless of the temporary stopping up or diversion of any highway under the powers conferred by the Order (temporary alteration, diversion, prohibition and restriction of the use of streets), NWL 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 subject to provision of reasonable prior notice to the undertaker (except in the case of emergency) and compliance at all times with the undertaker's reasonable site safety rules and health and safety law.

7. **Unmapped sewers/other apparatus**

- 7.1. Where the undertaker identifies any apparatus which may belong to or be maintainable by NWL but which does not appear on any statutory map kept for the purpose by NWL,

it shall inform NWL of the existence and location of the apparatus as soon as reasonably practicable.

- 7.2. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to NWL and afforded the same protection as other NWL assets.

8. **Expenses and Costs**

- 8.1. Subject to the following provisions of this paragraph and save where otherwise agreed in writing between NWL and the undertaker, the undertaker must repay to NWL following receipt of an itemised forecast, invoice or claim from NWL, all costs, charges and expenses which are reasonably and properly incurred or reasonably anticipated to be incurred by NWL in connection with:

8.1.1. the inspection, removal, alteration or protection of any apparatus which may be reasonably required in consequence of any works to construct the authorised development; or

8.1.2. the construction of any alternative apparatus which may be required in consequence of the execution of any such works as referred to in paragraph 5 of this Schedule.

- 8.2. Where the placing of alternative apparatus is Materially Different and such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been incurred if the apparatus placed had not been Materially Different, the amount which apart from this sub-paragraph would be payable to NWL by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

- 8.3. Where in accordance with sub-paragraph (1) the undertaker pays NWL in respect of an itemised forecast, invoice or claim for costs, charges, and expenses reasonably anticipated, should there be any unspent or uncommitted funds after the later of the expiry of the completion and commissioning of the alternative apparatus or receipt of the final account of costs from NWL's contractors, NWL shall repay such unspent or uncommitted funds within 60 Working Days of the total charges, costs and expenses actually reasonably and properly incurred being known by NWL.

9. **Indemnity**

- 9.1. Subject to sub-paragraphs 9.2 and 9.3, if for any reason or in consequence of the construction of any of the works by or at the direction of the undertaker that is consequential to the terms hereof 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 NWL, or there is any interruption in any service provided, or in the supply of any goods, by NWL, the undertaker must indemnify and keep indemnified NWL against:

9.1.1. any cost reasonably incurred by NWL in making good any damage or restoring the supply;

9.1.2. any other expenses, loss, damages, penalty or costs reasonably incurred by NWL, by reason or in consequence of any such damage or interruption.

- 9.2. NWL must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, NWL must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to paragraph 9.1. The undertaker shall only be liable under this paragraph for claims reasonably incurred by NWL.
- 9.3. The fact that any act or thing may have been done by NWL on behalf of the undertaker or in accordance with a plan approved by NWL or in accordance with any requirement of NWL or under its supervision does not, subject to paragraph 9.2 excuse the undertaker from liability under the provisions of sub-paragraph 9.1 unless NWL fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.
- 9.4. Nothing in paragraph 9.1 imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of NWL, its officers, servants, contractors or agents. NWL must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without having first consulted the undertaker and taken into account its representations.
10. **Duty to cooperate**
- 10.1. Where in consequence of the proposed construction of any of the authorised development, the undertaker or NWL requires the removal protection or alteration of apparatus, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of NWL's undertaking and NWL must use all reasonable endeavours to co-operate with the undertaker for that purpose.
11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NWL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.
- 11.1. Any dispute arising between the undertaker and NWL under this Part of this Schedule must be referred to and settled by arbitration under article 62 (arbitration).

Appendix 2 – Document Comparison of NGET vs NWL Protective Provisions

NWL Protective Provisions

FOR THE PROTECTION OF NORTHUMBRIAN WATER LIMITED

For the protection of NWL, the following provisions, unless otherwise agreed in writing between the undertaker and NWL, have effect.

1. In this Part of this Schedule:

“alternative apparatus”	means alternative apparatus adequate to enable NWL to fulfil its statutory functions in a manner that is no less efficient <u>a manner</u> than previously afforded to NWL and in all respects reasonably convenient to NWL including any reasonably necessary protective works for the apparatus;
“apparatus”	means the following items belonging to or maintained by NWL within the Order limits: a. in the case of NWL’s water undertaking: (i) mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations or other apparatus, structure, tunnel, shaft or treatment works or “accessories” (as defined in section 219(1) of the Water Industry Act 1991) belonging to or maintained or used by NWL 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 b. in the case of NWL’s sewerage undertaking: (i) any sewer, drain or disposal works vested in NWL under the Water Industry Act 1991; and (ii) any sewer, drain or disposal works which is so vested or is 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 any manholes, ventilating shafts, pumps or other accessories (as defined in section 219(1) of the Water Industry Act 1991) forming part of any such sewer, drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions"	includes powers and duties;
"in"	in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;
"Material Difference"	the placing of alternative apparatus of a type or capacity or of those dimensions or at a depth which is other than that agreed pursuant to paragraph 5.2 or as determined by arbitration in accordance with article 62 (arbitration) to be necessary, save where the placing of such apparatus in such manner and form and in such location is in accordance with those details reasonably given rise to by conditions on site provided that (save in the case of emergencies) NWL has notified the undertaker of those conditions as soon as reasonably practicable and the undertaker has agreed (such agreement not to be unreasonably withheld or delayed) to the placing of such apparatus in such manner and form and "Materially Different" shall be construed accordingly;
"NWL"	means Northumbrian Water Limited, company number 02366703, whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;
"plan"	includes sections, drawings, specifications and method statements; and
"the standard protection strips"	means strips of land falling within the following distances to either side of the medial line of any relevant pipe or apparatus: <ul style="list-style-type: none"> a. 2.25 metres where the diameter of the pipe is less than 150 millimetres; b. 3 metres where the diameter of the pipe is between 150 and 450 millimetres; c. 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; d. 6 metres where the diameter of the pipe exceeds 750 millimetres; and e. 6.5 metres where it is a sewer; and.
"undertaker"	means National Grid Electricity Transmission PLC

2. **Compulsory acquisition**

- 2.1. The undertaker must not without express written agreement of NWL exercise any power conferred by article 24 (compulsory acquisition of land) or article 25 (compulsory acquisition of rights) to acquire any of NWL's interests (such agreement not to be unreasonably withheld or delayed).
- 2.2. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed and such apparatus

is to be relocated, extended, removed or altered in any way, no alteration extension, relocation or removal shall take place until NWL has established to its reasonable satisfaction, without unnecessary delay, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

- 2.3. Regardless of any provision in the Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement ~~(such agreement not to be unreasonably withheld or delayed)~~, and before extinguishing any existing rights for NWL to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, with the agreement of NWL, create a new right for NWL to use, keep, inspect, renew and maintain the apparatus in a manner that is no less efficient than has previously been afforded to NWL, and which in all respects is reasonably convenient for NWL such agreement not to be unreasonably withheld or delayed.

3. **Protection Strips**

- 3.1. The undertaker must not within the standard protection strips interfere with or build over or under any apparatus within the Order limits or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, the placement of protection slabs or execute any filling around the apparatus within the standard protection strips unless otherwise agreed in writing with NWL, such agreement not to be unreasonably withheld or delayed and being subject to paragraph 3.2 below, and this provision must be brought to the attention of any contractor responsible for carrying out any part of the authorised development on behalf of the undertaker.
- 3.2. Where written agreement to undertake works within the standard protection strips is sought under this paragraph 3.2 NWL may request such further information as is reasonably necessary to understand the impact of the works proposed and provide approval under paragraph 3.1 PROVIDED THAT:
 - 3.2.1. Any request for further information is made within 15 Working Days of NWL receiving notification of the proposed works; and
 - 3.2.2. NWL must either reasonably agree to the proposed works or provide reasons for its failure to agree to the proposed works within 25 Working Days, or within 10 Working Days of receipt of all further information requested pursuant to paragraph 3.2.1 (whichever is later).
 - 3.2.3. For the avoidance of doubt nothing in this paragraph 3.2 shall be construed as a deemed approval from NWL for works to be carried out within the standard protection strips of NWL's apparatus.

4. **Alteration of NWL Apparatus**

- 4.1. Without prejudice to the generality of the foregoing, the alteration, extension, removal or re-location of any apparatus shall not be implemented until:
 - 4.1.1. any requirement for any permits under the Environmental Permitting Regulations 2016 or other replacement legislation and any other associated consents are obtained;

- 4.1.2. if applicable, the undertaker has made the appropriate application under sections 106 (right to communicate with public sewers), 112 (requirement that proposed drain or sewer be constructed so as to form part of the general system) or 185 (duty to move pipes, etc. in certain cases) of the Water Industry Act 1991 as may be required by those provisions and has provided a plan of the works proposed to NWL and NWL has given the necessary consent or approval under the relevant provision, such agreement not to be unreasonably withheld or delayed; and
 - 4.1.3. in the event that such works are to be executed by the undertaker, they are to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by NWL for the alteration or otherwise for the protection and maintenance of the apparatus, or for securing access to it.
 - 4.2. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will reasonably enable NWL to maintain or use the apparatus.
 - 4.3. The undertaker, in the case of the powers conferred by the Order for the protective work to buildings, must exercise those powers so as not to obstruct any reasonable means of access to any apparatus belonging to NWL.
 - 4.4. Without prejudice to paragraph 2.2 hereof if, in the exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that NWL's apparatus is altered, relocated or diverted, that apparatus must not be altered, removed, and any right of NWL to maintain or access that apparatus in that land must not be extinguished, until
 - 4.4.1. alternative apparatus has been constructed and is in operation to the reasonable satisfaction of NWL; and
 - 4.4.2. facilities and rights have been secured for that alternative apparatus in accordance with paragraph 5.1.

5. **Alternative apparatus**

- 5.1. Without prejudice to the generality of the foregoing and subject always to the provisions of paragraph 4.1 hereof, if, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under the Order, the undertaker requires the removal of any of NWL's apparatus placed in that land, the undertaker must give to NWL no less than 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 an undertaker reasonably needs to remove any of its apparatus) the undertaker must, afford to NWL the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of and emergency access to that apparatus such works for completion and the commissioning and operation of such apparatus to be complete to the reasonable satisfaction of NWL in advance of the removal of NWL's existing apparatus.

- 5.2. Any alternative apparatus to be constructed in land of the undertaker pursuant to the terms hereof must be constructed in such manner and in such line or situation as may be agreed between NWL and the undertaker.
- 5.3. If NWL notifies the undertaker that it desires the undertaker 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 must be executed by the undertaker without unnecessary delay under the superintendence and to the reasonable satisfaction of NWL.
- 5.4. Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use best endeavours to comply with NWL's reasonable requests for a reasonable period of time to enable NWL to:
 - 5.4.1. make network contingency arrangements; or
 - 5.4.2. bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.
- 5.5. Where, in accordance with the terms of the Order, the undertaker affords to NWL facilities and rights for the construction, maintenance in and access to land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted.
- 5.6. If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of NWL less favourable on the whole to NWL than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the undertaker must make provision for the payment of compensation by the undertaker to NWL as is reasonable having regard to all the circumstances.
- 5.7. Such facilities and rights as are set out in the preceding paragraphs 5.1, 5.5 or 5.6 are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2010 or other legislation.

6. **Stopping up**

- 6.1. Where in pursuance of the powers conferred by the Order any street is stopped up (permanent stopping up and restriction of use of streets and private means of access), where NWL has apparatus in the street or accessed by virtue of that street, it 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 NWL legal easements reasonably satisfactory to NWL in respect of such apparatus and access to it.
- 6.2. Regardless of the temporary stopping up or diversion of any highway under the powers conferred by the Order (temporary alteration, diversion, prohibition and restriction of the use of streets), NWL 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 subject to provision of reasonable prior notice to the undertaker

(except in the case of emergency) and compliance at all times with the undertaker's reasonable site safety rules and health and safety law.

7. **Unmapped sewers/other apparatus**

- 7.1. Where the undertaker identifies any apparatus which may belong to or be maintainable by NWL but which does not appear on any statutory map kept for the purpose by NWL, it shall inform NWL of the existence and location of the apparatus as soon as reasonably practicable.
- 7.2. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to NWL and afforded the same protection as other NWL assets.

8. **Expenses and Costs**

- 8.1. Subject to the following provisions of this paragraph and save where otherwise agreed in writing between NWL and the undertaker, the undertaker must repay to NWL following receipt of an itemised forecast, invoice or claim from NWL, all costs, charges and expenses which are reasonably and properly incurred or reasonably anticipated to be incurred by NWL ~~within the following three months~~ in connection with:

- 8.1.1. the inspection, removal, alteration or protection of any apparatus which may be reasonably required in consequence of any works to construct the authorised development; or

- 8.1.2. the construction of any alternative apparatus which may be required in consequence of the execution of any such works as referred to in paragraph 5 of this ~~Part of the~~ Schedule.

~~8.2. The value of any apparatus removed under the provisions of this Part of the Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.~~

~~8.3.~~8.2. Where the placing of alternative apparatus is Materially Different and such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been incurred if the apparatus placed had not been Materially Different, the amount which apart from this sub-paragraph would be payable to NWL by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

~~8.4. For the purposes of sub-paragraph (3), an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus.~~

~~8.5. An amount which apart from this sub-paragraph would be payable to NWL in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on NWL any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.~~

~~8.6.~~8.3. Where in accordance with sub-paragraph (1) the undertaker pays NWL in respect of an itemised forecast, invoice or claim for costs, charges, and expenses reasonably anticipated ~~within the following three months~~, should there be any unspent

or uncommitted funds after the later of expiry of ~~such three month period, the completion and commissioning of the alternative apparatus or receipt of the final account of costs from NWL's contractors~~, NWL shall repay such unspent or uncommitted funds within 60 Working Days of the total charges, costs and expenses actually reasonably and properly incurred being known by NWL.

9. **Indemnity**

9.1. Subject to sub-paragraphs 9.2 and 9.43, if for any reason or in consequence of the construction of any of the works by or at the direction of the undertaker that is consequential to the terms hereof 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 NWL, or there is any interruption in any service provided, or in the supply of any goods, by NWL, the undertaker must indemnify and keep indemnified NWL against:

9.1.1. any cost reasonably incurred by NWL in making good any damage or restoring the supply;

9.1.2. any other expenses, loss, damages, penalty or costs reasonably incurred by NWL, by reason or in consequence of any such damage or interruption.

9.2. NWL must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, NWL must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to paragraph 9.1. The undertaker shall only be liable under this paragraph for claims reasonably incurred by NWL.

9.3. The fact that any act or thing may have been done by NWL on behalf of the undertaker or in accordance with a plan approved by NWL or in accordance with any requirement of NWL or under its supervision does not, subject to paragraph 9.42 excuse the undertaker from liability under the provisions of sub-paragraph 9.1 unless NWL fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

9.4. Nothing in paragraph 9.1 imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of NWL, its officers, servants, contractors or agents. NWL must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without having first consulted the undertaker and taken into account its representations.

10. **Duty to cooperate**

10.1. Where in consequence of the proposed construction of any of the authorised development, the undertaker or NWL requires the removal protection or alteration of apparatus, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of NWL's undertaking and NWL must use all reasonable endeavours to co-operate with the undertaker for that purpose.

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NWL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.
- 11.1. Any dispute arising between the undertaker and NWL under this Part of this Schedule must be referred to and settled by arbitration under article 62 (arbitration).