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Your Ref: EN020026
Our Ref: EYW.NOR081.72
Date: 21 October 2026

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]

Response to Request for Information

We are instructed by Northumbrian Water Limited (**NWL**) in relation to the application for a Development Consent Order (**DCO**) for the Sea Link Project (the **Project**).

We write in response to the Secretary of State's request for Interested Parties comments on submissions made to the Secretary of State's request for information dated 28 September 2026. In particular, this response addresses the Applicant's update on negotiations with NWL on the protective provisions ("**PPs**") as set out at paragraph 48 of the "*Applicant's response to SoS Request for Further Information Letter*".

The Applicant submits that:

1. Including a provision that seeks to only apply section 185 of the Water Industry Act 1991 (**WIA**) if lawful, at paragraph 8(1) of the Applicant's proposed PPs, addresses NWL's concerns regarding cost recovery outside of that statutory regime.
2. Requiring compliance with NWL's published charging arrangements is inappropriate (as they are primarily directed at domestic utility connections and minor developments of a scale different to what applies to the Project), and would create project risk and uncertainty in relation to the recovery of apparatus diversion costs.
3. The proposed betterment and deferred renewal provisions at paragraphs 8.2, 8.4 and 8.5 of the Applicant's proposed PPs ensure NWL remains cost neutral and do not cause serious detriment to its undertaking.

NWL disagrees with the Applicant's position and respectfully requests that the Secretary of State adopt NWL's protective provisions submitted at Deadline 7. NWL considers its preferred PPs provide the appropriate framework under section 185 WIA and for safeguarding its statutory undertaking, whereas the Applicant's proposal creates uncertainty concerning the allocation and recovery of costs

arising from the Project, increasing the risk of disputes, delays to the Project and to the protection and diversion of essential water infrastructure.

As a statutory undertaker, NWL's land rights and apparatus support the exercise of its statutory functions. The DCO must therefore be considered within the wider statutory framework governing the protection of statutory undertakers.

Sections 127 and 138 of the Planning Act 2008 provide important safeguards where a DCO interferes with statutory undertakers land, rights or apparatus. Those protections would be significantly weakened if the DCO imposed diversion and replacement costs that NWL would otherwise be entitled to recover under section 185(5) WIA.

This issue is not simply one of cost allocation. NWL must continue to operate, maintain and protect its water infrastructure regardless of the Project's requirements. Requiring NWL to fund disputed or unsubstantiated project related costs creates uncertainty and will hinder its ability to plan and deliver those works while fulfilling its ongoing statutory duties.

Under section 37 WIA, NWL is required to develop and maintain an efficient and economical water supply system and to maintain, improve and extend its network as necessary to secure compliance with its statutory obligations. Where apparatus must be removed, diverted, protected, relocated or replaced as a consequence of the Project, NWL must implement the necessary measures to ensure the continued operation and maintenance of its network.

Section 185 WIA provides the statutory mechanism for altering or removing apparatus affected by development and requires the person serving notice to pay charges determined in accordance with the undertakers published charging rules. The purpose of the provision was expressly intended by Parliament to provide a transparent and consistent basis for cost recovery.

The suggestion that NWL's published charging arrangements are "primarily directed at domestic utility connections and minor developments" is not borne out by the content of the charging arrangements themselves, which can be accessed here:

<https://www.nwl.co.uk/developers/developer-services-charges/>

It will be noted that NWL's published Developer Services Arrangements 2026/27 are not limited to domestic connections or minor developments, as suggested by the Applicant. They apply to a broad range of development activities and infrastructure providers, including major infrastructure works, and contain provisions governing apparatus diversions and associated design, supervision and construction costs. They therefore provide a clear and established framework for assessing charges, contrary to the Applicant's suggestion. NWL rejects the premise that the scale or complexity of the Project justifies departing from the applicable statutory charging framework. Were that the case, the DCO applied for would expressly override or disapply the provisions of the WIA which it does not do.

The Applicant's proposed approach attempts to introduce an alternative cost recovery regime through the PPs contrary to that set out under statute. Given that the proposed betterment, deferred renewal or cost-sharing provisions are not reflected in NWL's published charging arrangements, the Applicant's proposed PPs would undermine the operation of section 185(5) WIA and would likely be unlawful and lead to further substantial dispute, delay and litigation between the parties.

As discussed, while a DCO can modify or disapply statutory provisions under section 120(5)(a) of the Planning Act 2008, the Applicant has not sought to disapply section 185(5) WIA. Nevertheless, the draft PPs advanced by the Applicant seek to introduce cost-sharing mechanisms inconsistent with the statutory charging framework.

Notwithstanding the above, the provision of replacement apparatus is not an independent investment decision by NWL but is necessitated by the Project. Any reduction in recoverable costs would require NWL to fund infrastructure works that would not otherwise have been undertaken at that time. There are also a number of additional factors that must be considered, including the availability of suitable apparatus, the need for cost-effective solutions, compliance with NWL's technical standards and whether the proposed apparatus represents an appropriate modern equivalent.

Accordingly, the proposed betterment, deferred renewal or other non-statutory cost sharing provisions are not agreed. They risk transferring costs of the Project to NWL that are contrary to the statutory framework set out section 185 WIA and will cause serious detriment to NWL's undertaking. In assessing the potential detriment, regard should be had to the cumulative implications of the required works, the operational importance of the affected apparatus, NWL's obligations to maintain continuity of water supply, and the potential financial exposure arising from the Applicant's proposed cost-sharing arrangements.

The Applicant's recent amendment to its proposed PPs does not resolve the parties' fundamental disagreement as to the applicable cost recovery regime. Rather than providing certainty within the DCO, they leave questions of financial liability to be resolved during project delivery, creating a risk of dispute and delay when diversion works are required. NWL submits that this does not provide appropriate protection for a statutory undertaker whose apparatus must remain operational and which must continue to discharge its statutory obligations, including its statutory duty under section 37 WIA to maintain an efficient water supply and has the potential to delay the delivery of the Project.

For the reasons set out above, the appropriate approach is to preserve NWL's entitlement to recover costs in accordance with S185(5) WIA, with any genuine adjustment for betterment or demonstratable deferred renewal benefit only applying where it is expressly permitted by that regime and can be established on proper evidence. For that reason we respectfully request that NWL's preferred PP's as submitted at Deadline 7 are included in the made DCO and those submitted by the Applicant in the updated DCO on 18 September 2026, are discarded.

Yours faithfully

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