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Your Ref: EN070009
Our Ref: LMS.NOR081.68
Doc No: 55364944v2
Date: 31 July 2025

By email: H2Teesside@planninginspectorate.gov.uk

Dear Sir

H2 Teesside Project - Application for Development Consent - Planning Act 2008
Reference: EN07009
Our Client: Northumbrian Water Limited (Interested Party Number H2TS - AFP107)
Applicant: H2 Teesside Limited
Subject: Response to Information Request from SoS - H2 Teesside – 21 July 2025

As you are aware, we are instructed by Northumbrian Water Limited ("NWL") in relation to the application for a Development Consent Order ("DCO") in respect of the H2 Teesside Project.

We write further to the Secretary of State's invitation to comment upon the information provided in response to his requests for information dated 13 June 2025 and 7 July 2025. In particular, we write to comment upon the Applicant's update dated 30 June 2025 in respect of the progress in agreeing protective provisions ('PPs') and legal side agreements with NWL (referred to as NWL's asset protection agreement 'APA').

We note the Applicant's comment that they have actively engaged with "all parties" and further that the Applicant refers to its legal representatives having conducted a detailed review of NWL's preferred form of protective provisions.

Further to our update on behalf of NWL dated 27 June 2025 (in which we advised that no progress had been made in agreeing protective provisions) we can confirm that a mark-up of the draft Side Agreement and Protective Provisions prepared by NWL some eight months ago was only returned to us for comment by the Applicant's solicitors as late as 14 July 2025.

Having reviewed the Applicant's proposed amendments to NWL's PPs and the APA, we note that the suggested changes are fundamental and numerous and concern key matters of principle in relation to costs and liability. The vast majority of the proposed changes by the Applicant are not acceptable to NWL and we have notified the Applicant's solicitors of NWL's position in the matter by returning our counter amendments to the APA and PPs on 25 July 2025. At the time of writing the Applicant's solicitors have not substantively responded to those changes.


Noting that drafts of NWL's APA and PPs were supplied by Ward Hadaway to the Applicant's legal representatives as long ago as November last year, and the fundamental differences between our clients on those provisions must have been known to them from that time, it is disappointing that the

Applicant/their solicitors chose not to engage with us on these points much earlier in the process and in good time to be considered and negotiated prior to the close of the Examination.

Notwithstanding the above, NWL is keen to work with the Applicant to agree terms suitable to both parties prior to the deadline for the Secretary of State's decision. However, we must regrettably confirm at this time that NWL does not yet have an agreed form of Protective Provisions or Side Agreement with the Applicant.

To assist we are enclosing with this letter the form of Protective Provisions which incorporate the amendments proposed by the Applicant to the extent acceptable to NWL. We respectfully request that in the event of the Secretary of State deciding to grant consent for the proposed scheme, Protective Provisions in the form enclosed with this letter, (or the form appended to our correspondence of 24 February 2025) are included in the made DCO.

Yours faithfully



Ward Hadaway LLP


wardhadaway.com

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 Schedule:

“alternative apparatus”	means alternative apparatus adequate to enable NWL to fulfil its statutory functions in no less efficient a manner than previously;
“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 style="margin-left: 40px;">(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 style="margin-left: 40px;">(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 style="margin-left: 40px;">(i) any sewer, drain or disposal works vested in NWL under the Water Industry Act 1991; and</p> <p style="margin-left: 40px;">(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;
"NWL"	means Northumbrian Water Limited, company number 02366703, whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;
"Order"	mean the H2Teesside Order as it is made by the Secretary of State pursuant to section 37 of the 2008 Act and any references to "Draft Order" are references to the draft of the Order most recently submitted to the Planning Inspectorate and published on [XXX];
"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 H2T, being the applicant for the Application

2. Compulsory acquisition

- 2.1. The undertaker must not without express written agreement of NWL exercise any power conferred by article [] (compulsory acquisition of land) or article [] (compulsory acquisition of rights) in respect of NWL's interests.
- 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 or extension 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 this 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 to use, keep, inspect, renew and maintain the apparatus that 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 any apparatus within the Order limits or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips unless otherwise agreed in writing with NWL, such agreement not to be unreasonably withheld or delayed, 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.

4. Protection of NWL Apparatus

- 4.1. Without prejudice to the generality of the foregoing, the alteration, extension, removal, re-location or diversion of any apparatus shall not be implemented until:
- 4.1.1. any requirement for any permits under the Environmental Permitting (England and Wales) 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:
 - 4.1.3.1. the continuing safety and operational viability of the apparatus; and
 - 4.1.3.2. the requirement for NWL to obtain reasonable access to the apparatus.
- 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 enable NWL to maintain or use the apparatus no less effectively than was possible before such obstruction.
- 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 or render less convenient the access to any apparatus belonging to NWL without the written consent of 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 and such apparatus is to be relocated or diverted, that apparatus must not be relocated or diverted, and any right of NWL to maintain 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 with the agreement of NWL for that alternative apparatus to use, keep, inspect, renew and maintain the apparatus.

5. Alternative apparatus

- 5.1. Without prejudice to the generality of the foregoing and subject always to the provisions of paragraph 4 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 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 that apparatus.
- 5.2. Any alternative apparatus to be constructed in land of or land secured by the undertaker pursuant to the terms in this Schedule 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 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.
- 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 paragraph 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. Unmapped sewers/other apparatus

- 6.1. 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.
- 6.2. 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.

7. Stopping up

- 7.1. 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
- 7.2. 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.

8. Indemnity

- 8.1. Subject to sub-paragraphs 8.4 and 8.5, if for any reason or in consequence of the construction of any of the works by or at the direction of the undertaker referred to in paragraphs [3] to [6] 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
- 8.1.1. any cost reasonably incurred by NWL in making good any damage or restoring the supply;
- 8.1.2. any other expenses, loss, damages, penalty or costs incurred by NWL, by reason or in consequence of any such damage or interruption.

- 8.2. 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 4.1. The undertaker shall only be liable under this paragraph for claims reasonably incurred by NWL.
- 8.3. Any dispute arising between the undertaker and NWL under this Schedule must be referred to and settled by arbitration under article 46 (arbitration).
- 8.4. 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 8.5, excuse the undertaker from liability under the provisions of sub-paragraph 8.1 unless NWL fails to carry out and execute the works properly with due care and attention and in a skilful and professional manner or in a manner that does not accord with the approved plan.
- 8.5. Nothing in paragraph 8.1 imposes any liability on the undertaker with respect to:
- 8.5.1. any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of NWL, its officers, employees, servants, contractors or agents.
- 8.6. NWL must give the undertaker reasonable notice of any such claim or demand.

9. Duty to cooperate

- 9.1. Where in consequence of the proposed construction of any of the authorised development, the undertaker or NWL requires the removal of apparatus or NWL makes requirements for the 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.
- 9.2. Nothing in this 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.