Oxfordshire Strategic Rail Freight Interchange
By email:
c/o Adrian Hunter
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Our ref: Oxfordshire SRFI/ Deadline 2 ExA 1/ FDBEE0269

23rd October 2026

Dear Mr Hunter,

Anglian Water Response to ExA Written Questions 1 for Oxfordshire Strategic Rail Freight Interchange

Q1.4.5 Clarification: Statutory Undertakers' Works

Paragraph 3.55 of the Planning Statement [APP-161] states that "The Proposed Development includes or requires the delivery of works to various utilities networks, both 'off-site' and within the Application Site".

Please explain which works are "included" and which are "required", where they are specified and how this affects your case for acquisition of the necessary land and/or rights.

Anglian Water have assets in the following land plots (Book of Reference - APP-145) (see tables below) whereby the applicant seeks 'permanent acquisition of all interests.' Whilst we acknowledge the applicant does not, as part of the scheme, propose to acquire, remove or divert the underground sewerage pipeline which passes through the above land parcels. We raise concerns in terms of those easements and rights being replaced with standard protective provision in place of Anglian Waters bespoke protective provisions. This is detailed further in our response to Question 18.1 of the ExA written questions.

Book of Reference Plan Number	AW Asset
3/1	Permanent acquisition of all interests – AW occupy land with an Underground sewerage pipeline.
3/2	Permanent acquisition of all interests – AW occupy land with an Underground sewerage pipeline.
3/3	Permanent acquisition of all interests – AW occupy land with an Underground sewerage pipeline.
3/6	Permanent acquisition of all interests – AW occupy land with an Underground sewerage pipeline.
3/7	Permanent acquisition of all interests – AW occupy land with an Underground sewerage pipeline.
3/7a	Permanent acquisition of all interests – AW occupy land with an Underground sewerage pipeline.
3/7b	Permanent acquisition of all interests – AW occupy land with an Underground sewerage pipeline.
3/8	Permanent acquisition of all interests – AW occupy land with an Underground sewerage pipeline.
3/21a	Permanent acquisition of all interests – AW occupy land with an Underground sewerage pipeline.
3/24	Permanent acquisition of all interests – AW occupy land with an Underground sewerage pipeline.
3/34	Permanent acquisition of all interests – AW occupy land with an Underground sewerage pipeline.

Q1.18.1 Impact on Anglian Water Services' assets within the order limits and possible mitigation

Paragraph 9.4.30 of ES chapter 9 [APP-177] states that "the proposed development is located within TW's sewerage area, with the exception of parts of the Ardley Bypass and M40 Junction 10 highway improvement works which fall within Anglian Water's sewerage area."

Could the applicant explain how the proposed development would affect the assets of Anglian Water Services and how any resulting impacts would be mitigated, including the provisions that would be required within the DCO? In doing so, the applicant should have regard to concerns raised in relevant representation (RR-009), including the request for bespoke protective provisions to be incorporated into the DCO.

Could Anglian Water Services confirm if the applicant's approach would sufficiently mitigate any effects on Anglian Water Services assets and whether these are adequately secured in the DCO?

Whilst the Applicant's preference to rely on the Part 6 PPs is noted, this is not and will not be agreed. Anglian Water's position remains that its established BPP's are to be included within the draft DCO.

The BPP's have been included in approximately 10 DCO's over the past 5 years, across varying NSIP projects. Anglian Water requires a standardised approach to preserve the protection of its assets, operational land and statutory undertaking. Without uniformity, the consistency of approach that Anglian Water maintains across all NSIP projects is completely undermined. Anglian Water's asset protection and engineering teams are familiar with and work routinely in accordance with the BPP's, so deviating from this would require internal review, changes to internal governance, guidance and training to ensure that those responsible on the ground understand the applicable obligations and procedures. It's quite clear that this would result in a significant administrative burden and delay to projected timescales and ultimately increase the risk of inadvertent noncompliance, which would be in neither the interests of the Applicant or Anglian Water. In short, it is simply unworkable for Anglian Water for the BPP's not to be used.

We would therefore encourage the Applicant to reconsider its position. In the absence of agreement with the BPP's, Anglian Water will have no other option but to instruct Council to pursue its position through the examination process to ensure its operational requirements and statutory functions are adequately protected.

Please see the below rationale for the BPPs for further detail.

1. Introduction

It has been Anglian Water's policy, since the introduction of Development Consent Orders by way of the Planning Act 2008, not to accept the generic utility protective provisions that are common in first drafts. We do not know the extent to which the water industry was consulted when those generic provisions were developed. However they suffer from a number of shortcomings in Anglian Water's view, and these will be set out below. We consider it appropriate therefore to include a further part within the protective provisions schedule, specific to Anglian Water where it is an affected water and/or sewerage undertaker.

2. Consistency

Notwithstanding the merits of the specific protective provisions, it is important when operating a large network that the legal environment in which operatives are asked to work is largely the same. It is impossible to operate a large network with the efficiency that bill-payers are entitled to expect if operatives are required to check the exact terms of any relationship with third parties each time they carry out an activity. To that end, an efficient operator will always seek to keep the broad terms of such relationships the same. It is for this reason that Anglian Water seeks to achieve two things in particular.

2.1 Consistency of terms

Anglian Water seeks to keep the protective provisions for Development Consent Orders, Transport and Works Orders, and local or private Acts of Parliament:

- substantially the same as protective provisions applied to other Development Consent orders, Transport and Works Orders, and local or private Acts of Parliament; and
- broadly the same as the relationship with landowners and developers generally.

2.2 Consistency of process

Many of the activities forming an interface between Anglian Water and the undertaker that are envisioned by the Development Consent Order replicate rights that are given to landowners and developers by statute in any event. In order to process the application of those rights efficiently, the specific protective provisions seek to channel undertakers towards using those processes where appropriate.

3. Planning Inspectorate Guidance regarding protective provisions

The Planning Inspectorate's "Advice note 15: Drafting Development Consent Orders" provides, in our opinion, support for this approach:

> *4.1 Applicants are encouraged to agree Protective Provisions with the protected party(ies) prior to submitting the application for development consent. Where agreement on Protective Provisions has not been reached during the Preapplication stage, applicants should, as a minimum, submit with their application the standard Protective Provisions for all relevant protected parties with any amendments that the Applicant is seeking annotated with full justification included within the Explanatory Memorandum.*
> …
> *4.3 Submitting blank Protective Provisions Schedules is not acceptable and is likely to pose a serious risk to the acceptance of an application under s55 of the PA2008.*
>
> *4.4 It is common for Protective Provisions to be drafted in unison with [our underlining] the protected party(ies) or by them first hand…*

4. Identified shortcomings of the template general utility protective provisions

The following are examples of where we believe the general utility protective provisions can be improved:

4.1 Protected strips

The general provisions provide a blanket prohibition on certain activities within 300 millimetres of underground water or sewerage apparatus. Anglian Water's experience over the years concludes that this protected strip is much too narrow. The provisions also prohibit work "situated" within 10 metres of any such apparatus. Anglian Water would only consider such a wide protected strip appropriate to protect pipes of fairly wide diameter (and therefore importance). We consider it useful to apply therefore a prohibition within the same dimensions of protected strips of both the type of work subject to the 300 millimetre proscription and the type of work subject to the 15 metre proscription. These dimensions vary in accordance with the diameter of an underground pipe, provided the work does not breach the overall interdiction on damaging apparatus, and this hopefully represents a rational approach to risk management that benefits both parties.

4.2 Environmental Permitting

At many points along Anglian Water's network, water discharges into watercourses. This activity requires a permit under the Environmental Permitting (England and Wales) Regulations 2016. If the network is altered using the powers provided by the Development Consent Order in such a way that the location of the discharge changes, a new permit will be required, otherwise a continuing offence will be committed by Anglian Water. The specific protective provisions ensure that such a permit is in force before any re-routing of water for discharge.

4.3 Discharge easements

Following the case of British Waterways Board -v- Severn Trent Water Limited [2001] 3 WLR 613, [2001] 3 All ER 673 it was made clear that there was no statutory power for sewerage undertakers to commence any new discharge into privately owned land, and therefore an easement must be obtained. The specific protective provisions ensure that such a permit is in force before any re-routing of water for discharge.

4.4 Contingency arrangements

It is not often possible seamlessly to switch flows from to-be-abandoned apparatus to new apparatus without any loss of service to customers. Over-pumping or by-pass arrangements may be required, and sometimes test flows or wash-out flows are required. The general utility provisions envisage the right to maintain the old apparatus lasting until the new is in operation, but in reality the physical substitution of flows is equally important. The specific provisions therefore make it clear that contingency arrangements like these must be in place before switching of flows is attempted.

4.5 Physical access to apparatus

The general utility provisions ensure that where works are near or affecting apparatus, access arrangements are provided for, but no more than that. However, it is entirely conceivable that the undertaker's works are not near the apparatus and do not in the normal sense of the word affect it. Furthermore, Anglian Water only has private rights (in the form of land ownership or easements) to access a very small percentage of its assets, relying as it does on statutory powers in practically all cases.

4.6 Disputes concerning discharges of water into public sewers

The operative terms of the Development Consent order grant the right for the undertaker to discharge water into public sewers. It is made clear that the consent of the owner of the sewerage network is required to discharge water into it (subject to reasonableness); but that disputes must be determined in accordance with section 106 of the Water Industry Act. This

misunderstands the nature of section 106. First, consent is not required in the section 106 process: it is a matter of notice to connect and counter-notice in certain circumstances, and it is a question of whether the counter-notice is validly given that may be referred to Ofwat under section 106(4). Secondly, following the Supreme Court decision in Barratt Homes Limited (Respondents) v Dŵr Cymru Cyfyngedig [2009] UKSC 13, the capacity of the receiving network – which is considered a town and country planning issue – cannot be taken into account, let alone the effect on the receiving treatment works. Of course, because the DCO effectively provides planning permission, there is nowhere for Anglian Water to raise the question of capacity. Thirdly, it is questionable whether Ofwat, as a creature of statute would consider that it has jurisdiction to arbitrate disputes arising from a Development Consent Order.
Anglian Water therefore provides, either in the protective provisions, or more commonly in the body of the development consent order, that disputes are referred to the same arbitrator using the same processes as are available elsewhere in the development consent order.

4.7 Use of existing processes

As stated above, it is considered more efficient if the undertaker would use the existing processes provided to all landowners under section 41 (requisition of new water main), section 98 (requisition of new public sewer or public lateral drain), section 51A (adoption of new water main), section 104 (adoption of new private sewer or water main) or section 185 of the Water Industry Act 1991. The specific protective provisions direct the undertaker to use such processes.

Yours sincerely,

[redacted]

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