

SCHEDULE 19

Protective Provisions

PART 6

FOR THE PROTECTION OF ESSEX AND SUFFOLK WATER

58. For the protection of Essex and Suffolk Water, the following provisions shall, unless otherwise agreed in writing between the undertaker and Essex and Suffolk Water, have effect.

59. In this Part of this Schedule—

“Authority” has the meaning given in the Water Industry Act 1991;

“alternative apparatus” means alternative apparatus adequate to enable ESW to fulfil its statutory functions in not less efficient a manner than previously;

“apparatus” means any works, mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations (and any accessories to those items) or other apparatus, structures, tunnels, shafts or treatment works belonging to or maintained by ESW for the purposes of water supply and includes a water main, resource main or trunk main and any inspection chambers, wash-out pipes, pumps, ferrules or stopcocks for the main or works (within the meaning of section 219 of the Water Industry Act 1991);

“condition 1” means the satisfaction of the conditions set out in paragraphs 71 and 72;

“condition 2” means the satisfaction of the conditions set out in paragraphs 73, 74 and 75;

“domestic supply” has the meaning given in the Water Industry Act 1991;

“ESW” means Northumbrian Water Limited, t/a Essex and Suffolk Water, company number 02366703, whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;

“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;

“plan” includes sections, drawings, specifications and method statements;

“the standard protection strips” means strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus—

- (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; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres

unless otherwise agreed;

“WINEP process” means the water industry national environment programme process which informs the Authority’s price review process for the period 2025 to 2030 (PR24); and

“WRMP 24” means Water Resource Management Plan 2024.

60. The undertaker must not interfere with, build over or near to any apparatus within the Order land 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 ESW, such agreement not to be unreasonably withheld or delayed, and the existence of this paragraph 60 shall be brought

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to the attention of any agent or contractor responsible for carrying out any part of the authorised development on behalf of the undertaker.

61. The alteration, extension, removal or re-location of any apparatus shall not be implemented until—

- (a) any required permits under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation and any other associated consents are obtained; and
- (b) the undertaker has made the appropriate application under section 185 (duty to move pipes, etc.) of the Water Industry Act 1991 as may be required by that provision and has provided a plan and section of the works proposed to ESW and ESW has given the necessary consent or approval under that provision, such agreement not to be unreasonably withheld or delayed,

and such works 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 ESW for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

62. 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 ESW has established to its reasonable satisfaction contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

63. 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 ESW to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, with the agreement of ESW, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for ESW, such agreement not to be unreasonably withheld or delayed.

64. 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 ESW to maintain or use the apparatus no less effectively than was possible before such obstruction.

65. 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 ESW and afforded the same protection as other ESW assets.

66. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 60 to 62 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 ESW, or there is any interruption in any service provided, or in the supply of any goods, by ESW, the undertaker must—

- (a) bear and pay the cost reasonably incurred by ESW in making good any damage or restoring the supply; and
- (b) make reasonable compensation to ESW for any other expenses, loss, damages, penalty or costs incurred by ESW, by reason or in consequence of any such damage or interruption.

67. Any agreement or approval of ESW required under these provisions (including pursuant to paragraph 60, 61 and 63—

- (a) must not be unreasonably withheld or delayed;

- (b) is deemed to have been given if it is neither given nor refused within 42 days of the date of submission of a request for such agreement or approval, or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and
- (c) any request for agreement or approval of ESW required under these provisions must be sent to companysecretary@nwl.co.uk. or such other address as ESW may from time to time appoint instead for that purpose and notify to the undertaker in writing.

68. Any dispute arising between the undertaker and ESW under this Part of this Schedule must be referred to and settled by arbitration under article 84 (arbitration) unless otherwise agreed in writing between the undertaker and ESW.

Water Industry Act 1991

69. Unless otherwise agreed by ESW in its absolute discretion, the undertaker will not serve notice on ESW pursuant to section 41 or any other notice under the Water Industry Act 1991 in so far as it relates to domestic supply (or any equivalent provision with a similar effect consequential on non-household retail exit) in relation to the authorised development and hereby withdraws any such notice which the undertaker may have served on ESW prior to the coming into force of this Order.

Supply of potable water to the authorised development

70. Subject to either condition 1 or condition 2 being satisfied, and subject to the terms and conditions of any agreement made under section 55 Water Industry Act 1991 or determination by the Authority under section 56 Water Industry Act 1991 (or any equivalent provisions with a similar effect), ESW will use its reasonable endeavours to supply the authorised development with—

- (a) an annual average of 2.2 Ml/d of potable water; and
- (b) a peak demand of 2.8 Ml/d of potable water,

as soon as reasonably practicable.

Condition 1

71. The Environment Agency has confirmed the new annual licensed quantities of water for ESW's River Waveney abstraction licence (7/34/19/*S/0108) and the Environment Agency's Waveney Augmentation Groundwater Scheme abstraction licence.

72. Following satisfaction of paragraph 71, ESW, acting reasonably, has confirmed to the undertaker that there is sufficient sustainable water resource in the Northern Central Water Resource Zone to meet forecast demand from its existing customers and forecast demand from its future customers, including demand from the undertaker for the authorised development.

Condition 2

73. New supply schemes have been identified in ESW's Water Resources Management Plan 2024 (WRMP24).

74. Following satisfaction of paragraph 73, the Secretary of State for the Department for Environment, Food and Rural Affairs has granted permission for the publication of ESW's final WRMP24.

75. Following satisfaction of paragraph 74, the Authority has approved the required supply schemes from ESW's approved WRMP24 in its Final Determinations for the 2024 Price Review.