

**RE: OXFORDSHIRE COUNTY COUNCIL (DIDCOT GARDEN TOWN HIGHWAYS
INFRASTRUCTURE – A4130 IMPROVEMENT (MILTON GATE TO COLLETT ROUNDABOUT)
A4197 DIDCOT TO CULHAM LINK ROAD AND A415 CLIFTON HAMPDEN BYPASS) CPO 2022**

CASE REF: NATTRAN/SE/HAO/286 (DPI/U3100/23/12)

CLOSING SUBMISSIONS ON BEHALF OF

THAMES WATER UTILITIES LIMITED

Introduction¹

1. Thames Water Utilities Limited ('TWUL') is a statutory water and sewerage undertaker. TWUL owns and operates the Culham Sewage Treatment Works, Abingdon Road, Culham, Abingdon, OX14 3DD ('the Culham Works') as part of its statutory undertaking.²
2. TWUL is the freehold owner of plots contained within the Order Land. If confirmed, the Order would authorise *inter alia* the compulsory purchase of operational land comprising part of the Culham Works. This includes land that has been identified as required in order to accommodate future growth (plots 17/11a, 17/11b, 17/11c, 17/11d, 17/11e, 17/11f, 17/11g, 17/14a, 17/14b which are subject to permanent acquisition and 17/11h, subject to temporary possession) and land that currently contains TWUL's operational assets (plot 17/11i).
3. On 17 March 2023, TWUL submitted a statutory objection to the Oxfordshire County Council (Didcot Garden Town Highways Infrastructure - A4130 Improvement (Milton Gate to Collett Roundabout), A4197 Didcot to Culham Link Road, and A415 Clifton Hampden Bypass) Compulsory Purchase Order 2022 ('the Order').
4. For reasons summarised in these Closing Submissions, the confirmation of the Order whilst it includes land within TWUL's freehold ownership would result in a serious

¹ 'EiC' and 'XX' refer to evidence in chief and cross examination respectively.

² Section 94 of the Water Industry Act 1991 imposes a duty on TWUL as a sewerage undertaker to provide and improve its sewerage system.

detriment to TWUL's statutory undertaking. This is the position of both TWUL and the Department for the Environment, Food and Rural Affairs ('Defra').³ Whilst the Acquiring Authority has sought to maintain that the acquisition of TWUL's land would not have such an effect, the only evidence presented by the Acquiring Authority on this matter is that contained in Mr Moon's Proof of Evidence. Mr Moon confirmed in cross-examination, however, that he was not "*suitably qualified*" to answer questions on this issue and that both TWUL and Defra were better placed to form a judgment on this question.⁴

5. Whilst the objection submitted by TWUL does not fall within section 16 of the Acquisition of Land Act 1981 as a result of a procedural error,⁵ for reasons explained later in these Closing Submissions, TWUL's position is that the impact on its undertaking must be taken into account by the Secretary of State in determining whether or not to confirm the Order.
6. The remainder of these Closing Submissions are structured as follows:
 - a. TWUL's current operations at the Culham Works;
 - b. Future expansion proposals at the Culham Works;
 - c. Impact of the acquisition of TWUL's land;
 - d. Alternative scheme alignment;
 - e. Failure to engage in early negotiations;
 - f. Weight to be given to impact on TWUL;
 - g. Conclusion.

TWUL's current operations at the Culham Works

7. The Culham Works serves a rural catchment area that includes the villages of Berinsfield, Culham and Clifton Hampden, as well as the Culham Science Centre.⁶

³ Mr Smith, Proof of Evidence, Appendix 6 (pdf page 159).

⁴ Mr Moon, XX.

⁵ The objection by TWUL was submitted to the Department for Transport, rather than Defra, which is the 'appropriate minister' for these purposes, such that it does not qualify as a formal section 16 objection.

⁶ Mr Paton, Proof of Evidence, para 6.1.

8. An outline of the process undertaken at the Culham Works, as explained by Mr Paton in EiC,⁷ is as follows:

- a. Preliminary treatment process. The flow from the catchment arrives at the Culham Works to the inlet works. The flow is macerated to remove debris from the foul water in order to protect assets downstream from the inlet works;
- b. The storm water management apparatus comprises a balancing tank and three storm tanks. In times of excess weather, the balancing tank is used to manage flows from the catchment. Under TWUL's permit, under times of extreme weather (such as rainfall or snow melt), flows will overflow from the balancing tank into the storm tanks. At times of low flow, the flow that is accumulated in the storm tank and balancing tanks will be pumped back to the heads of the work to be treated. If the storm tanks become full, the flows will discharge to the environment in accordance with TWUL's permit.
- c. Primary treatment process. This process takes place in the primary settlement tanks ('PSTs'). This process involves slowing down the flow to allow the heavier particles to settle to the bottom, creating a layer of sludge. This layer is removed and held in the sludge holding tank, until a point that the sludge can be dewatered and removed to a different facility for further treatment.
- d. Secondary treatment process. This consists of two key processes. Five filter beds allowing biological treatment to take place. Second, there is the final settlement stage that takes place in the humus tanks. This allows the remaining particles to settle to the bottom as sludge. The sludge is removed and circulated to the PSTs for treatment.
- e. Final effluent discharge. The final effluent undergoes sampling and quality monitoring before it is discharged into the watercourse at the south of the Culham Works. The final effluent monitoring and sampling point is located on plot 17/11i,

⁷ The Culham STW – Annotated Site Plan (**O-INQ-09**) was provided by TWUL during Mr Paton's EiC.

which is proposed to be permanently acquired under the Order. TWUL's permit requires it to monitor the quality of the effluent prior to discharge.

9. The Culham Works currently processes flows from a population equivalent ('PE') of 4,000. 'PE' is a proxy for the flow and load that arrives to the Culham Works. It includes flow from residential properties as well as trade effluent flows from businesses in the area, as well as transient flows such as from tourism.
10. The capacity of the Culham Works is dictated by the size and capacity of the assets on site and the ability of those assets to treat the flow arriving at the Works, in addition to the terms of the permit from the Environment Agency. The permit sets out the volume of the flow that the Works are allowed to treat, as well as the treatment quality of the flow (i.e. the standard that the flow must be treated to before it is discharged).
11. There are five other sewage treatment works ('STW') within a five km radius of the Culham Works. These are Abingdon STW, which is approximately 4.5km to the west; Nuneham Courtenay STW, which is approximately 3.8km to the north east; Long Wittenham STW, which is approximately 1.7km to the south east; Dorchester STW, which is approximately 4.6km to the south east; and Didcot STW⁸, which is approximately 4.9km to the south west. As explained by Mr Paton, contrary to Mr Moon's suggestion⁹ that other STWs could serve developments within the catchment of the Culham Works, none of the other STWs identified are readily available to be able to serve the flow within this catchment area.¹⁰ In summary:
 - a. Nuneham Courtenay, Dorchester and Long Wittenham STWs all have a PE lower than Culham STWs (these STWs have a PE of 370; 2,000 and 950 respectively). None of these STWs could therefore handle the size of development and growth that is forecast within the Culham catchment; and

⁸ Didcot STW has previously been discounted as an option to meet the growth in the Culham catchment. It was not covered in evidence as it was not a STW suggested by the Acquiring Authority as a suitable alternative.

⁹ Mr Moon, Proof of Evidence, para 4.67.

¹⁰ Mr Paton, EIC.

- b. As explained further below, the cost of the upgrade works that would be required at Abingdon STW to accommodate additional flows from the Culham catchment has been assessed and is in the region of £65 million.

12. The Culham Works currently operates with sufficient headroom for the PE which it serves so as to meet the key sanitary parameters set out in its operating Permit TH/CSSC.2374 ('the Permit'). TWUL's Process Model for the Culham Works, which considers capacity in five year increments, indicates that between 2021 and 2026, which is the start of Asset Management Plan Period 8 ('AMP8'), the Culham Works currently has enough treatment capacity to remain compliant with the sanitary parameters for the projected growth up to 2026.

Future expansion proposals at the Culham Works

13. The plots of land proposed to be compulsorily acquired towards the north of the Culham Works¹¹ ('the Northern Parcel') do not currently contain operational assets. However, this land is held as operational land for the purposes of facilitating the future expansion of the Culham Works.¹²

Planning for growth

14. As noted above, the Culham Works currently serves a PE of 4,000 and has been assessed as having sufficient capacity up to process flows from the catchment up to 2026, which is the end of AMP8.

15. TWUL's Process Model has identified that the expansion of the Culham Works will be required in order to meet projected growth within its catchment. The additional demand arises principally as a result of two large development locations within the catchment, namely, Culham Science Centre and Berinsfield Garden Village. Both development sites have been allocated within the Local Plan for a significant quantum of housing development.

¹¹ Namely, plots 17/11a, 17/11b, 17/11c, 17/11d, 17/11e, 17/11f, 17/11g, 17/14a and 17/14b; 17/11h is proposed for temporary possession.

¹² Mr Paton, EIC.

16. The population within the Culham Works catchment area is expected to increase by approximately 46% by 2031. This means that the PE for the Culham Works will increase from circa 4,000 PE to over 5,800. The planned growth in the population of the catchment is projected to further increase during Asset Management Plan Period 9 ('AMP9'). The PE for the Culham Works is expected, therefore, to be circa 10,500 by 2036 (an increase of over 160% compared to the baseline position of 4,000 PE).
17. Where additional demand is identified within STW catchment areas, TWUL assesses whether the growth is sufficient to warrant an upgrade of any STWs. In the first instance, TWUL looks at whether there is sufficient land within an existing site boundary to accommodate additional assets. If there is sufficient land within the site boundary, the option pursued will be an increase in treatment intensity at the existing STW. Only if there is insufficient land available within the STW boundary will TWUL look to another STW in proximity with spare capacity and/or land, in order to investigate a transfer of flow between catchments. Finally, if there are no other STWs in proximity with spare capacity or land, TWUL will consider the feasibility of a 'nature based' solution or look to expand a STW using low footprint intensive assets.¹³
18. As explained by Mr Paton, the reason that TWUL look to increase treatment intensity on available land within existing site boundaries in the first instance is that acquiring land can be a long process.¹⁴ Using land that is already owned by TWUL therefore reduces risk to the upgrade works.¹⁵
19. In order to meet the forecast additional demand within the Culham catchment, TWUL carried out a process of investigating solutions to meet the demand as part of producing its AMP8 Business Plan (Price Review 2024 ('PR24')). The process of designing solutions to meet the forecast growth in flow began in 2022.¹⁶ The reason that this work has to commence so early is twofold.¹⁷ The first is the nature of the price review process. TWUL submitted its PR24 submission in October 2023 for approval by Ofwat in winter 2024

¹³ Mr Paton, Proof of Evidence, Appendix 1, Figure 17 (pdf page 13).

¹⁴ Mr Paton, EiC.

¹⁵ Mr Paton, EiC.

¹⁶ Mr Paton, EiC.

¹⁷ Mr Paton, EiC.

ahead of the start of AMP8 in April 2025.¹⁸ The process of preparing this submission commenced 18 months to two years ahead of its submission.¹⁹ The second factor is the internal governance procedures at TWUL. Proposals for upgrade works must proceed through a series of gateways.²⁰ The process takes approximately 27 months from the initial work carried out by system planners to the development of a detailed design for upgrade works.²¹ It takes a further 18 to 30 months for the project to be complete.²²

20. The TMS24 Enhancement Case was submitted to Ofwat for approval in October 2023.²³ As explained by Mr Paton, TWUL submitted a number of Enhancement Cases to Ofwat.²⁴ The Enhancement Case seeks to secure enhancement funding during the period of AMP8, to accommodate for the high level of growth forecast. The Draft Enhancement Case sets out the proposed enhancement works at fifteen STWs in total within the AMP8 period.²⁵

21. The Culham Works has been identified as one of the fifteen requiring enhancement works to meet a 46% growth in AMP8.²⁶ Table 10 in the Enhancement Case identifies a need to increase biological capacity, dry weather flows, flow to treatment value and storm tank volume. These relate to the parameters set out in TWUL's Permit. Table 12 in the Enhancement Case identifies the options that have been considered and whether those options have been retained.²⁷

The preferred solution for meeting the growth within the Culham catchment

22. The preferred solution to meet the forecast growth is to expand the Culham Works using the Northern Parcel.

23. The high level proposed solution is shown on a plan in the appendices to Mr Smith's Proof.²⁸ As explained by Mr Paton, the proposed solution is to install a Nereda and TT

¹⁸ Mr Paton, EiC.

¹⁹ Mr Paton, EiC.

²⁰ Mr Paton, EiC.

²¹ Mr Paton, EiC.

²² Mr Paton, EiC.

²³ Mr Paton, Proof of Evidence, Appendix 1.

²⁴ Mr Paton, EiC.

²⁵ Mr Paton, Proof of Evidence, Appendix 1, Table 10 (pdf page 8).

²⁶ Mr Paton, Proof of Evidence, Appendix 1, Table 10 (pdf page 8).

²⁷ As explained by Mr Paton, the Enhancement Case includes Culham in the second row of the table ("*expand STWs*") as opposed to the first row ("*increase treatment intensity at existing STWs*") by mistake.

²⁸ Mr Smith, Proof of Evidence, Appendix 5 (pdf page 156).

plant, which is a package plant that does a lot of the same processes that the PSTs, filter beds and humus tanks do but in a single plant.²⁹ The Nereda and TT plant would meet the shortfall in capacity arising from the increased flow within the catchment area. The solution would also deliver an additional storm tank, which would meet the need for increased storm tank capacity to manage flows in wet weather, and an additional sludge holding tank.

24. As explained by Mr Paton, in arriving at the preferred solution, TWUL looked at two other potential solutions:³⁰

- a. The first was a transfer of flow from the Culham Works to the Abingdon STW. The estimated cost of this solution is £65 million for the upgrade to the Abingdon STW to accommodate for the increase in flow from the Culham catchment; and
- b. The second was to install a percolating filter works on the Northern Parcel. The estimated cost of these works would be £51 million.

25. The main reasons that the solution outlined above is being promoted by TWUL as the preferred option are as follows:³¹

- a. The preferred solution would enable TWUL to provide sufficient capacity up to 2036;
- b. The cost of the preferred solution is considerably less costly than the two alternative options considered above. The cost of the upgrades is £25 million in total. This means that it represents the most cost effective solution for TWUL's customers; and
- c. The preferred solution makes best use of land already owned by TWUL and therefore avoids the need to purchase further land. This in turn reduces the risk of further costs and delays associated with land acquisition from third parties.

²⁹ Mr Paton, EiC. Mr Smith, Proof of Evidence, Appendix 5 (pdf page 156).

³⁰ Mr Paton, EiC.

³¹ Mr Paton, Proof of Evidence, para 10.3.

26. As the land is operational land, TWUL would look to implement the upgrades under permitted development rights pursuant to the Town and Country Planning (General Permitted Development) (England) Order 2015, Part 13 of Schedule 2.³² As clarified by Mr Paton in cross-examination, none of the upgrade works would require the construction of a building.³³
27. In order to accommodate the projected growth, the proposed upgrades need to commence within the next 2 to 5 years in order to ensure that the upgrades are delivered ahead of 2031.

Impact of the acquisition of TWUL's land

Northern Parcel

28. The Northern Parcel of land at the Culham Works is included within the Order for permanent acquisition. If the Order is confirmed, the Northern Parcel cannot be used to facilitate the upgrade as proposed.
29. If the Culham Works were not upgraded or there was a delay in delivering the necessary capacity so that it is not available by the point at which the increased flow came online,³⁴ the consequences could be as follows:³⁵
- a. Flooding of land surrounding the Culham Works as a result of increased flows within the catchment without adequate capacity to drain the catchment effectively;
 - b. Internal and external property flooding as a result of foul water flows surcharging the network, for example, at manholes;
 - c. Increased storm overflow events;

³² Mr Paton, EiC.

³³ Mr Paton, XX.

³⁴ As confirmed by Mr Paton in EiC, the consequences of a delay in delivering the upgrade works would be the same as those that could arise if the upgrades were not delivered at all. In particular, developers still have the right to connect to the Culham Works, whether or not the upgrades have been completed in time.

³⁵ Mr Paton, Proof of Evidence, para 11.10.

- d. Events that result in breaches of the site's statutory permits, resulting in penalties from our economic regulator and the risk of prosecution from the Environment Agency; and
- e. Non-compliance with the site's quality parameters in each year that upgrades are delayed, resulting in financial penalties. This could lead to pollutions and deterioration of the watercourse.

Plot 17/11i

- 30. As explained above, plot 17/11i at the rear of the Culham Works currently contains the final effluent point for the Works.
- 31. If this plot was permanently acquired as currently proposed within the Order, TWUL would be at risk of being non-complaint with its Permit. The Permit stipulates the location of the final effluent point and specifies how many times TWUL must monitor for quality.
- 32. If TWUL were to have to move the final effluent point, that would require prior agreement with the Environment Agency, which is responsible for issuing TWUL's Permit. TWUL's customers would ultimately bear the costs associated with moving the equipment currently on plot 17/11i.
- 33. If the final effluent point were to be retained on the plot to be acquired, there would be a risk that flows that are not related to the Culham Works could get in to the apparatus and impact on the sampling carried out. This would result in TWUL being non-compliant with its Permit and facing non-compliance penalties.

TWUL's position on impact on TWUL's statutory undertaking

- 34. It is agreed with the Acquiring Authority that TWUL is best placed to understand its operational needs and how those should be met, as well as to form a view on the impact of the acquisition on its statutory undertaking.³⁶

³⁶ Agreed by Mr Moon in XX.

35. TWUL's position is that the acquisition of the Northern Parcel and plot 17/11i would result in a serious detriment to its statutory undertaking.³⁷
36. The Northern Parcel is critical for the upgrade of the Culham Works if that upgrade is to be carried out within the necessary timeframe to meet the growth that is due to come online in 2031.³⁸ The failure to carry out the necessary upgrades, either at all or in time to meet the forecast growth, would create a serious risk of flooding and pollution and would bring TWUL into breach of its Permit.
37. Plot 17/11i contains operational equipment that cannot be moved without prior consultation with the Environment Agency. Retaining the assets on the plot after the acquisition of TWUL's interest would pose a risk to the ability to carry out sampling and may result in TWUL being non-compliant with its Permit.

Defra's position on impact on TWUL's statutory undertaking

38. TWUL submitted evidence to Defra on 14 December 2023 on the impact of the acquisition on its statutory undertaking.³⁹ Defra provided a written response on 15 January 2024.⁴⁰ The letter explained that whilst a "*procedural error*" meant that TWUL's objection was not submitted to Defra within the relevant time period to be considered as an objection under section 16 of the Acquisition of Land Act 1981, it would ask that its position on the test in section 16 is considered prior to deciding whether to confirm the Order.
39. The letter set out the two tests in section 16 and summarised Defra's position as follows:
- "Defra officials agree with Thames Water's assertion that neither of the terms can be qualified and proceeding to make the order would impact Thames Water's ability to carry out its operational activities. The reasons are set out below."***⁴¹
40. In particular, Defra accepted TWUL's evidence that the Northern Parcel was "*essential for the performance of the undertaker's activities*" as it had been identified for the expansion of the Culham Works. The letter summarised the consequences that would arise if the

³⁷ As confirmed by Mr Paton in EiC.

³⁸ Mr Paton, EiC.

³⁹ Mr Smith, Proof of Evidence, Appendix 8 (pdf page 165).

⁴⁰ Mr Smith, Proof of Evidence, Appendix 6 (pdf page 159).

⁴¹ Mr Smith, Proof of Evidence, Appendix 6 (pdf page 159).

Northern Parcel was acquired and the Works could not be upgraded, including flooding and breaches of the Permit for the Works. The letter concluded as follows:

“For these reasons, I would like to request that you do not proceed to make the Order whilst it includes the land required by Thames Water for expansion of the Culham Works and the land in parcel 17/11i which is already required as part of Thames Water’s daily operational activity.”

41. There is no dispute that Defra (like TWUL) is better placed than the Acquiring Authority to form a view on the impact of the acquisition of the land on its statutory undertaking, nor that Defra agrees with TWUL that the acquisition of the land would result in a serious detriment to the undertaking.⁴²

Response to the Acquiring Authority’s case on impact on acquisition

42. The Acquiring Authority’s case in respect of the impact of the acquisition of the Northern Parcel on TWUL turns on the following two points:⁴³

- a. That the expansion of the Culham Works is not necessary as there are other potential solutions to meeting the increased need;⁴⁴ and
- b. TWUL can rely on its own powers of compulsory acquisition to acquire replacement land to enable the expansion of the Culham Works.⁴⁵

43. With regards to the first of these points, Mr Moon accepted in XX that TWUL were best placed to understand the demands on its assets and how best to meet that demand.⁴⁶ Notwithstanding the evidence in his Proof, Mr Moon did not consider himself suitably qualified to answer questions on the question of whether there were alternative solutions to expanding the Culham Works. On this basis, the Acquiring Authority’s evidence as to

⁴² Mr Moon, XX.

⁴³ Mr Moon confirmed in XX that the argument advanced in his Proof of Evidence at para 4.66 and 4.75 that the growth only arose as a result of development that was facilitated by the scheme was not presented as an answer to the impact of the acquisition on TWUL. If the scheme is delivered and the Northern Parcel acquired, then the increased growth will be delivered and TWUL will not be able to deliver the proposed upgrades on the Northern Parcel.

⁴⁴ Mr Moon, Proof of Evidence, para 4.68.

⁴⁵ Mr Moon, Proof of Evidence, para 4.72.

⁴⁶ Mr Moon, XX.

the other STWs that could meet the growth within the Culham catchment (which, in any event has been showed to be wrong by Mr Paton) should be attributed no weight.

44. With regards to the second point, as explained by Mr Paton, the reliance on CPO powers by TWUL could result in delays of approximately 2 to 2.5 years that would prevent the upgrades coming forward within the necessary timeframe.⁴⁷ If the Order were confirmed and TWUL's land acquired, TWUL simply could not meet the current timeframe for delivery of the upgrades.⁴⁸ The risk that a CPO was not confirmed also means that this option would not provide sufficient certainty for TWUL to advance a solution based on any additional land that could be acquired.
45. Both of these points were initially raised by the Acquiring Authority in June 2023 in response to which Mr Smith explained why these points did not provide solutions to the impact on TWUL's statutory undertaking.⁴⁹ Notwithstanding this, the Acquiring Authority has continued to advance these points as solutions to the impact on TWUL. This underlines the continued failure of the Acquiring Authority to give proper weight to TWUL's concerns about the impact of the acquisition on its undertaking.
46. For the first time during the inquiry, the Acquiring Authority advanced an additional argument, namely, that due to the existence of third party rights across the Northern Parcel, the ability to deliver the proposed expansion proposals are constrained.⁵⁰ As confirmed by Mr Moon, this was not a point advanced by the Acquiring Authority in discussion with TWUL, nor in its written evidence.⁵¹ The reason for this was that the Acquiring Authority had "*assumed that the third party rights were something that TWUL would already be aware of*".⁵²
47. In response to this point, TWUL is undertaking a constraints report which it will seek to agree with the Acquiring Authority before submission, demonstrating how the third party would not impact the ability to deliver the proposed upgrades on the Northern Parcel. In

⁴⁷ Mr Paton, Proof of Evidence, para 11.8.

⁴⁸ Mr Paton, Proof of Evidence, para 11.8.

⁴⁹ Mr Smith, Proof of Evidence, Appendix 3, pdf page 101.

⁵⁰ Advanced in XX of Mr Paton.

⁵¹ Mr Moon, XX.

⁵² Mr Moon, XX.

short, the Acquiring Authority's argument that these would hinder the delivery of the upgrades is simply a red herring; TWUL was not only aware of the existence of the rights, but have taken steps when granting them to ensure that they do not frustrate the delivery of the future development of the Northern Parcel.

48. In conclusion, therefore, none of the arguments advanced by the Acquiring Authority provide any answer to the impact of the acquisition on TWUL.

Alternative scheme alignment

49. In its objection letter of 17 March 2023, TWUL indicated that there was other more suitable land available for the scheme that would avoid the need to acquire the Northern Parcel.

50. There is now no dispute that there is no technical highways engineering reason why the Scheme could not be realigned to the north west so as to avoid the need to acquire TWUL's land.⁵³ Mr Chan confirmed that from a "*pure highways alignment perspective*" there was nothing about the land to the north-west that makes it unsuitable to deliver the scheme.

51. Indeed, Mr Chan was asked in EiC what the design constraints would be if the scheme had to be moved further north. Mr Chan's response was that the scheme would encroach on land owned by the UK Atomic Energy Authority ('UKAEA') and this could impact on some of the trees and plants on the site and alter the proposed secondary access to the site.⁵⁴ However, Mr Chan confirmed in XX that, based on his experience, these constraints would not provide "*showstoppers*" that would prevent the re-alignment of the scheme to the north-west.⁵⁵

52. Whilst Mr Chan maintained that the design of the scheme had sought to reduce the impact on TWUL's undertaking,⁵⁶ he confirmed that the option of aligning the scheme further north west to avoid TWUL's land was not looked at in detail during the design

⁵³ Mr Chan, XX.

⁵⁴ Mr Chan, EiC.

⁵⁵ Mr Chan, XX. Mr Chan accepted that there was no evidence that any trees that could be impacted had any particular value or protection.

⁵⁶ Mr Chan, XX.

process.⁵⁷ Nor is this surprising. By the time that the preliminary design was settled in October 2021, the Acquiring Authority had no detailed information about the impact of acquiring the Northern Parcel on TWUL or its proposals to expand the Culham Works.⁵⁸ For reasons explained further later in these Closing Submissions, this underlines the failure of the Acquiring Authority to enter into meaningful engagement with TWUL about the impact of the acquisition on its undertaking until such a stage where it was too late to meaningfully reduce that impact.

53. Mr Chan further confirmed that, had the Acquiring Authority known about the operational impact of the scheme on TWUL when designing the scheme, it would have designed the scheme as far as possible to avoid TWUL's land.⁵⁹ Mr Chan further accepted that it was a "*possibility*" that had the Acquiring Authority known, as it does now, about the operational impact of the land acquisition on TWUL, it would have been almost the 'number one priority' for the design team to avoid TWUL's land given the risk to the scheme that a valid section 16 representation from TWUL could have caused.⁶⁰ Indeed, Mr Chan confirmed that it was a "*possibility*" that had the Acquiring Authority known the full extent of the impact on TWUL when it was designing the scheme, it would have done everything possible to avoid acquiring TWUL's land.⁶¹

54. Given that there is no highways engineering reason why the scheme could not be re-aligned, the question of where the scheme should go turns on a balance between the impact on TWUL and the impact on the landowner to the north of the site, the UKAEA. This question was not one addressed in either the Acquiring Authority or TWUL's evidence, as it was raised for the first time during XX of Mr Paton. Mr Chan was understandably not able to comment on the question of the impact on the UKAEA. None of the Acquiring Authority's other witnesses considered themselves capable of giving evidence on this question.⁶²

⁵⁷ Mr Chan, EiC.

⁵⁸ Mr Chan, XX.

⁵⁹ Mr Chan, XX: "*that's a safe assumption*".

⁶⁰ Mr Chan, XX.

⁶¹ Mr Chan, XX.

⁶² Notwithstanding requests to cross-examine the Acquiring Authority's witnesses on this point, the Acquiring Authority indicated that none of its witnesses were capable of speaking to this issue. For this reason, as indicated during the inquiry, the points made in submission have not been put in XX.

55. As a consequence, there is no evidence before the inquiry to demonstrate that the realignment of the scheme to the north-west would result in any adverse impact to the UKAEA or its operations. Indeed, whilst the site is allocated as an employment site in the Local Plan, there is no evidence before the inquiry that the realignment of the scheme to the north west would hinder the delivery of this allocation.⁶³

56. Whilst Mr Paton was taken to the masterplan for the site in XX, the masterplan only provides an indication of the proposals for the development of the site in the “*long term*” (to 2050).⁶⁴ The key to the masterplan shows that the land to the north west is identified for “*proposed buildings not yet designed or built*”.⁶⁵ It is also notable that in light of the available space on the site as shown by the masterplan, there is no reason to assume that the long term aspirations for development of the site could not be amended so as to accommodate a realignment of the road. Nor has the Acquiring Authority presented any evidence to demonstrate otherwise.

57. It is notable that the UKAEA, unlike TWUL, is not a statutory undertaker. It therefore does not benefit from the statutory framework in the Acquisition of Land Act 1981 that is designed to protect statutory undertakers.

58. In conclusion, therefore, the Acquiring Authority has provided no evidence to demonstrate that the scheme could not be realigned so as to avoid the detrimental impact on TWUL’s undertaking. TWUL’s position remains, therefore, that there is other more suitable land available for the scheme.

Failure to engage in early negotiations

59. The following five points are now agreed between TWUL and the Acquiring Authority:

- a. The Acquiring Authority did not have an understanding of TWUL’s proposals to use the Northern Parcel for expansion of the Culham Works, nor what the impact of

⁶³ Whilst there was a suggestion by counsel for the Acquiring Authority that the UKAEA would have representations to make in respect of this proposal, the Acquiring Authority did not raise this point in its written evidence as a reason that the scheme could not be realigned, such that there was no opportunity for this matter to be properly explored. Any suggestion that the UKAEA would object to any realignment is therefore unevicenced.

⁶⁴ Sir Ian Chapman, Proof of Evidence for the Planning Inquiry, Appendix 1 (pdf page 44).

⁶⁵ Sir Ian Chapman, Proof of Evidence for the Planning Inquiry, Appendix 1 (pdf page 44).

the acquisition of the Northern Parcel would be on TWUL at the time of the design process for the scheme;⁶⁶

- b. Plans showing the precise area of land to be acquired through the Order were only provided to TWUL on 20 December 2022, two days before the Order was made.⁶⁷ The Acquiring Authority was unable to provide detailed plans to landowners prior to this date as the design for the scheme had not yet been finalised;⁶⁸
- c. The plans were enclosed with what Mr Moon describes as an ‘initial contact’ letter sent by Gateley Hamer to TWUL on that date.⁶⁹ By the time of this letter, the design of the scheme had been finalised;⁷⁰
- d. The negotiations and engagement that took place following 22 December 2022 took place within the context of the red line boundary that had been fixed by the making of the Order. This influenced what could be offered to TWUL in terms of amendments to the scheme design in order to mitigate the impact on its undertaking;⁷¹
- e. Mr Smith, on behalf of TWUL, requested that the Acquiring Authority consider acquiring replacement land as early as May 2023.

60. The key points in dispute between the Acquiring Authority and TWUL are the following:

- a. Whether there was meaningful engagement between the Acquiring Authority and TWUL prior to the making of the Order on 22 December 2022 and in particular, the relevance of the requests for survey access prior to 22 December 2020 and the requests for information in July 2021 to this issue; and

⁶⁶ Mr Chan, XX. Mr Moon, XX: *“ultimately we weren’t aware that the proposals to the north of Thames Water’s site would have any detrimental effects on Thames Water’s undertaking”*.

⁶⁷ Mr Moon, XX. There is some dispute as to whether initial plans were provided earlier as part of a request for information, however Mr Moon explained that *“we weren’t able to issue plans to TW before December 2022 due to ongoing finalisation of scheme design”*.

⁶⁸ Mr Moon, XX.

⁶⁹ Mr Moon, Proof of Evidence, Appendix SM2.14. The term ‘initial contact’ letter is Mr Moon’s own description of the letter.

⁷⁰ Mr Moon, XX.

⁷¹ Mr Moon, XX.

- b. The relevance of the lack of an objection to the safeguarding policy in the Local Plan that was adopted in December 2020 and the planning application.

61. These points are addressed in turn below.

Extent of meaningful engagement prior to the making of the Order

62. The position of the Acquiring Authority is that whilst negotiations and engagement prior to, and in parallel with, the making of a CPO is “*best practice*”, it is not a “*requirement*”.⁷²
63. The CPO Guidance makes clear, however, that compulsory purchase is intended as a “*last resort*”.⁷³ Whilst an acquiring authority need not wait until negotiations to “*break down*”⁷⁴ before starting the compulsory purchase process, this presupposes that some form of negotiations take place prior to the making of a CPO. Indeed, the CPO Guidance makes clear that a confirming authority “*will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all land and rights included in the Order by agreement*”.⁷⁵
64. TWUL’s position is that there was no meaningful engagement or negotiations between the Acquiring Authority and TWUL prior to the making of the Order in December 2022.
65. It is readily apparent from the schedule of correspondence in Mr Moon’s Appendix SM2.14 that the contact between the Acquiring Authority and TWUL prior to December 2022 when the Order was made was concerned with access to TWUL’s site to carry out surveys. As explained by Mr Smith, TWUL receive hundreds of requests for survey access on a weekly basis.⁷⁶ The fact that a request for survey access is received would not itself trigger escalation within TWUL from the estate managers, without a clear proposal to acquire the land in question.
66. Whilst Mr Moon accepted in XX that contact about survey access could not be said to constitute meaningful engagement on its own,⁷⁷ he maintained that this correspondence

⁷² Mr Moon, EiC.

⁷³ CPO Guidance, para 2.

⁷⁴ CPO Guidance, para 2.

⁷⁵ CPO Guidance, para 2.

⁷⁶ Mr Smith, XX.

⁷⁷ Mr Moon, XX.

was relevant to whether or not the Acquiring Authority had engaged meaningfully with TWUL prior to December 2022 and should be considered in the context of other discussions that were held during this period.⁷⁸ Mr Moon referred in EiC to a number of ‘conversations’ with TWUL personnel prior to December 2022 about the proposals to acquire the land. However, the Acquiring Authority has produced no documentary evidence to support this position. TWUL considers that had the Acquiring Authority considered these conversations to constitute proper engagement about the acquisition of TWUL’s interests, they would have been included within Mr Moon’s schedule of engagement and clearly documented.

67. TWUL’s position is that the Acquiring Authority failed to meaningfully engage or negotiate with TWUL at all prior to the making of the Order. This is based on the following two factors:

- a. First, contact between an acquiring authority and landowner about survey access does not constitute meaningful engagement or negotiation for the acquisition of land as envisaged by the CPO Guidance; and
- b. Second, the very fact that Mr Moon describes the letter of 20 December 2022 as an “*initial contact*” letter indicates that this was the first time that the Acquiring Authority contacted with TWUL specifically in respect of the compulsory acquisition of its interests in land. Any engagement prior to this letter would, in any event, have been substantially undermined by the fact that TWUL did not have specific plans showing the extent of land to be acquired.

68. The consequences of the lack of meaningful engagement prior to the making of the Order is that the Acquiring Authority simply did not understand what the impact of the Order would be on TWUL’s undertaking when it was designing the scheme. By the time engagement began, the Acquiring Authority were unable to offer any more than a ‘light touch’ revision of the scheme design, which proved insufficient to mitigate the impact on TWUL.⁷⁹ The fact that the scheme *could* have been re-aligned to the north-west had the Acquiring Authority had a proper understanding of the impact of the acquisition highlights

⁷⁸ Mr Moon, XX.

⁷⁹ As explained by Mr Smith, Proof of Evidence, para 9.6.

precisely why the CPO Guidance encourages early engagement with affected parties. Ultimately, the impact on TWUL could have been avoided had the Acquiring Authority engaged with TWUL prior to the making of the Order.

Lack of objection to Local Plan safeguarding and planning application

69. The Acquiring Authority's case rests heavily on the fact that TWUL did not object to the safeguarding of the Northern Parcel in the Local Plan, which was adopted in December 2020.

70. As explained by Mr Paton, a safeguarding policy for a road scheme, which does not in itself generate additional demand for wastewater capacity, is not something that would have triggered involvement by TWUL.⁸⁰ In any event, as at December 2020, TWUL had not yet started to plan for the increased growth that would result from allocations within that Local Plan. It is not surprising, therefore, that TWUL did not object to the safeguarding policy in the Local Plan.

71. Notwithstanding the reasons that TWUL did not object to the safeguarding policy or the planning application, this point provides no answer to TWUL's objection. As accepted by Mr Moon, the fact that a landowner fails to object to a safeguarding policy or planning application in no way impacts their ability to object to the compulsory acquisition of their land.⁸¹ Furthermore, it is agreed that the safeguarding of the land in the local plan does not shift the burden onto the landowner to engage with the Acquiring Authority in the context of a CPO and nor is there anything in the CPO Guidance to that effect.⁸²

Conclusion on engagement

72. TWUL's position is that the Acquiring Authority's approach to engagement falls well short of what the CPO Guidance requires of an acquiring authority. There is no dispute that one of the key objectives of early engagement, as encouraged by the CPO Guidance, is to enable acquiring authorities to understand more about the land that it seeks to acquire and the measures that can be taken to mitigate the impact of the acquisition on

⁸⁰ Mr Paton, XX.

⁸¹ Mr Moon, XX.

⁸² Agreed by Mr Moon, XX.

landowners.⁸³ The failure of the Acquiring Authority to engage with TWUL at any early stage has resulted in a situation where the opportunity to avoid that impact was missed.

73. Finally, it is striking that the tone of the Acquiring Authority's case is that it "*should have been obvious*" to TWUL that its land was to be acquired; that TWUL "*should have been aware*" of the Acquiring Authority's proposals; and that it was TWUL that failed to raise concerns once alerted to the prospect of compulsory acquisition by the Acquiring Authority's requests for site access.⁸⁴ These points provide no answer to the simple fact that the burden of communicating and engaging with affected parties rests on the body seeking to compulsorily acquire their land. It is not the responsibility of any landowner to 'read between the lines' in order to ascertain whether or not their land may be subject to compulsory purchase. It is for this very reason that Acquiring Authorities are expected to provide full information from the outset of the CPO process.⁸⁵

Section 16, Acquisition of Land Act 1981

74. As noted above, TWUL's objection was not sent to Defra within the relevant timeframe to be considered as a formal section 16 representation.⁸⁶ This was the result of a procedural error and not, as suggested by the Acquiring Authority, a decision not to submit such a representation.⁸⁷

75. Notwithstanding this, as explained above, Defra has provided its response on whether the test in section 16 of the Acquisition of Land Act 1981 would be met. Defra's response makes clear that it does not consider that either of the following tests are satisfied, namely:

⁸³ CPO Guidance, para 17.

⁸⁴ These points were put to Mr Paton in XX, and raised in Mr Moon's EiC.

⁸⁵ For an illustration of where this requirement has been found to be breached, see the Vicarage Fields decision at Mr Smith, Proof of Evidence, Appendix 1, para 229ff. (pdf page 38). In that case, limited information on the CPO and the CPO process was provided to those affected by the CPO 10 days prior to the making of the CPO; this was considered to be 'tardy' by the Inspector.

⁸⁶ Mr Smith, Proof of Evidence, paras 8.3 – 8.6.

⁸⁷ It was put to Mr Paton in XX that TWUL had the option of making a section 16 representation and chose not to. As explained in Mr Smith's Proof of Evidence, para 8.5, Mr Smith confirmed to Defra that the objection submitted on 17 March 2023 was intended to be a section 16 representation but it had not been submitted to the appropriate minister within the relevant time period.

- a. That TWUL's land can be acquired and not replaced without serious detriment to the carrying on of its undertaking (section 16(2)(a)); or
- b. That TWUL's land can be acquired and replaced by other land belonging to, or available for acquisition by, the undertaker without serious detriment to the carrying on of its undertaking (section 16(2)(b)).

76. It is clear, therefore, that had a valid section 16 representation been made, Defra would not have issued a certificate allowing the Order to be confirmed.

77. The Acquiring Authority no longer advances evidence on the issue of whether or not the acquisition of the land would result in a serious detriment to the undertaking.⁸⁸ It is common ground that both TWUL and Defra are better placed than the Acquiring Authority and its witnesses to form a view on this issue.

78. The position of the Acquiring Authority⁸⁹ appears to be that the view formed by Defra is in some way undermined by the fact that Defra was not in receipt of full information about the following three matters: (i) that TWUL has compulsory purchase powers that could be relied upon to acquire additional land for expansion of the Culham Works; (ii) that TWUL could meet the additional demand through alternative options; and (iii) that the Acquiring Authority has proposed to facilitate the acquisition of replacement land for TWUL. The suggestion appears to be that Defra would have reached a different view had it been properly appraised of these matters.

79. TWUL makes four points in response, as follows:

- a. First, the evidence submitted to Defra on behalf of TWUL expressly highlighted the possibility of acquiring replacement land adjacent to the Culham Works.⁹⁰ The letter also highlighted that TWUL would have to rely on CPO powers if such land could not be acquired by agreement and outlined the delay that this would cause

⁸⁸ Mr Moon, whose Proof of Evidence contained evidence on this matter, confirmed in XX that he was not 'suitably qualified' to express a view on this matter.

⁸⁹ Based on the questions put to Mr Paton in XX but notably, not advanced by any of its witnesses.

⁹⁰ Mr Smith, Proof of Evidence, Appendix 8 (pdf page 169).

to the delivery of the upgrades.⁹¹ These factors were therefore plainly taken into account when Defra reached its conclusion.

- b. Second, the letter also identified that TWUL had carried out a process of considering options to meet the increased demand within the Culham catchment.⁹² It explained why the expansion of the Works on the Northern Parcel was the preferred solution in operational and financial terms.⁹³ TWUL were not, and are still not, in a position to say that there are any other alternative solutions that would be capable of meeting the increased growth within the relevant timeframe. The work done to date by TWUL indicates that even if other potential options are feasible, they will be considerably more costly than the preferred solution. The fact that TWUL may have to pursue an alternative solution in itself highlights the detrimental effect of the acquisition on TWUL's undertaking.
- c. Third, the letter to Defra was submitted on 14 December 2023, only six working days after the Acquiring Authority first indicated that it would be prepared to explore the acquisition of additional replacement land for TWUL.⁹⁴ Neither of the options proposed by the Acquiring Authority at that stage were suitable for the expansion of the Works.⁹⁵ As at the date of submission, therefore, there was plainly no guarantee that an area of suitable replacement land would be made available to TWUL so as to mitigate the impact of the acquisition on its undertaking.
- d. Fourth, whilst the parties are continuing to work towards a solution through the provision of replacement land to TWUL, the position as at the close of the inquiry remains that there is no alternative land available to TWUL for the purposes of its undertaking. Indeed, the land identified will only be made available to TWUL as and when the parties have entered into an option agreement, which would only become unconditional when planning permission for the expansion of the Works

⁹¹ Mr Smith, Proof of Evidence, Appendix 8 (pdf page 169 – 170).

⁹² Mr Smith, Proof of Evidence, Appendix 8 (pdf page 169).

⁹³ Mr Smith, Proof of Evidence, Appendix 8 (pdf page 169).

⁹⁴ Mr Smith, Proof of Evidence, para 6.21.

⁹⁵ Mr Smith, Proof of Evidence, para 6.22.

on the replacement land is granted. Until that date, the circumstances as set out in the letter submitted to Defra remain materially unchanged.

80. Whilst the letter from Defra dated 15 January 2024⁹⁶ does not present a legal bar on the confirmation of the Order, TWUL submits that it ought to be given substantial weight in determining whether or not the Order should be confirmed whilst it contains TWUL's land. In particular, the statutory framework in the Acquisition of Land Act 1981 seeks to provide special protection to statutory undertakers. The purpose of the certificate process is to prevent the compulsory acquisition of a statutory undertaker's land in circumstances where it would result in serious detriment to its undertaking.

81. Notwithstanding the procedural error in respect of the section 16 representation, Defra has provided a clear indication that it would not have issued a section 16 certificate so as to allow the Order to be confirmed had a valid section 16 representation been made. This indication is, in TWUL's submission, an obviously material consideration in the Secretary of State's determination and ought to be given substantial weight in circumstances where the Acquiring Authority has produced no substantive evidence⁹⁷ to challenge TWUL's position as to the operational impact of the acquisition. Furthermore, the impact of the acquisition on TWUL's undertaking must be considered in the context of the fact that there is other land to the north-west of the red line boundary that is capable⁹⁸ of delivering this part of the scheme.

Conclusion

82. Whilst TWUL will continue to work with the Acquiring Authority towards resolving its objection, as things stand, the confirmation of the Order would result in a serious detriment to TWUL's statutory undertaking. At present, there is no alternative land that is available for acquisition by TWUL that could replace the land proposed to be acquired pursuant to the Order.

⁹⁶ Mr Smith, Proof of Evidence, Appendix 6 (pdf page 159).

⁹⁷ As set out above, whilst Mr Moon's Proof of Evidence purported to dispute TWUL's evidence on operational impact, Mr Moon accepted that he was not 'suitably qualified' to provide a view on these matters (Mr Moon, XX) and that TWUL "*knows best its assets and its requirements*" (Mr Moon, EIC).

⁹⁸ At least in highways engineering terms. No evidence was given by the Acquiring Authority as to any other reasons why the land could not be used to deliver the scheme.

83. For the reasons summarised above and explained in detail in TWUL's written and oral evidence, TWUL invites the Secretary of State not to confirm the Order whilst it contains TWUL's land.

Daisy Noble

Francis Taylor Building

3 May 2024