

# Hampshire Water Transfer and Water Recycling Project

## Environmental Statement – Chapter 2 Planning legislation and policy

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## 2 Planning legislation and policy

### 2.1 Introduction

- 2.1.1 The purpose of this chapter is to provide an overview of the principal legislation and policy framework relevant to the assessment and decision making for the Hampshire Water Transfer and Water Recycling Project (hereafter referred to as 'the Proposed Development').
- 2.1.2 In providing an overview, this chapter does not represent an exhaustive list of all legislation and policy relevant to the assessment of the technical disciplines covered by this Environmental Statement (ES). Additional details of policies relating to different specific topics are covered within each of the ES topic chapters (ES Chapters 6 to 19, Volume I (Document reference 6.1, DCO Volume 6)). For the avoidance of doubt, all legislation references in this ES are to the 'as amended' versions.

### 2.2 Planning legislation

- 2.2.1 The Planning Act 2008 (PA 2008) [1] is the primary legislation relating to the decision-making process for Nationally Significant Infrastructure Projects (NSIPs) and projects of national significance for which development consent is required. It provides the legal framework for applying for, examining, and determining Development Consent Order (DCO) applications.

#### Section 35 of the Planning Act 2008

- 2.2.2 The Applicant, by letter dated 6 April 2022 requested that the Secretary of State (SoS) give a direction for the Proposed Development under Section 35 of the PA 2008.
- 2.2.3 A Direction relating to the Proposed Development was provided by the SoS on 31 May 2022. This was subsequently varied on 19 November 2024. The Direction confirms that the Proposed Development should be treated as a development of national significance for which development consent is required, taking into consideration that the Proposed Development would:
1. *“be for a complex and substantial scheme, involving extensive infrastructure works and requiring multiple powers and consents (including multiple planning permissions, compulsory acquisition powers and highway orders),*
  2. *benefit from an application being determined in a timely and consistent manner by the Secretary of State, and by removing the need to apply and the uncertainty of applying, for a large number of separate powers and consents.”*
- 2.2.4 The SoS also acknowledged the Proposed Development would:
1. *“provide a substantial number of people across Hampshire with a resilient water supply during drought conditions and would be a key piece of strategic regional infrastructure in meeting the modelled supply deficit for Southern Water's water supply zone;*

2. *make a significant contribution (c. 47%) to resolving the overall supply demand deficit in Southern Water’s Western Area of supply;*
3. *support the delivery of up to 87,000 new homes by 2045;*
4. *have the capacity to be upgraded to support further increases in population growth, housing supply and / or further water resource pressures;*
5. *mitigate against the social and economic risks of debilitating water restrictions for both businesses and households when the weather is dry; and*
6. *make a significant contribution to the UK Government's environmental objectives and policy priorities.”*

2.2.5 As such, the Applicant is making a DCO application under the PA 2008 to seek consent for the construction, operation and maintenance of the Proposed Development.

### **The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017**

2.2.6 The Infrastructure Planning (Environmental Impact Assessment (EIA)) Regulations 2017 (the ‘EIA Regulations’) [2] provide the regulatory framework for the EIA process for DCO applications.

2.2.7 As described in ES Chapter 1 Introduction, Volume I (Document reference 6.1, DCO Volume 6), the Proposed Development falls within the threshold set out in Schedule 2 paragraph 10(l) of the EIA Regulations relating to installations of long-distance aqueducts (which include pipelines constructed to carry water from a source to a distribution point at distance). As such, an EIA is being prepared in respect of the Proposed Development, in support of the DCO application.

2.2.8 Regulation 5(2) of the EIA Regulations states that the EIA must:

*“identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed development on the following factors–*

*a) population and human health;*

*b) biodiversity, with particular attention to species and habitats protected under any law that implemented Directive 92/43/EEC and Directive 2009/147/EC;*

*c) land, soil, water, air and climate;*

*d) material assets, cultural heritage, and landscape; and,*

*e) the interaction between the factors referred to in sub-paragraphs (a) to (d).”*

2.2.9 Regulation 5(3) states that *“The effects referred to in paragraph (2) on the factors set out in that paragraph must include the operational effects of the proposed development, where the proposed development will have operational effects.”*

2.2.10 These factors are considered within the topic-specific chapters of this ES (ES Chapters 6 to 19, Volume I (Document reference 6.1, DCO Volume 6)).

2.2.11 In addition, Regulation 5(4) of the EIA Regulations states that the EIA should include, where relevant, *“the expected significant effects arising from the vulnerability of the proposed development to major accidents or disasters that are*

*relevant to that development.*” This is considered within ES Chapter 14 Major accidents and disasters, Volume I (Document reference 6.1, DCO Volume 6).

- 2.2.12 Schedule 4 paragraph 5(e) of the EIA Regulations states that a description should be included, of the likely significant effects arising from *“the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resource.”* This is addressed within ES Chapter 20 Cumulative and in-combination effects, Volume I (Document reference 6.1, DCO Volume 6).
- 2.2.13 Regulation 32 of the EIA Regulations sets out the requirements for developments that are likely to have likely significant effects on the environment in a European Economic Area state. As explained in ES Chapter 5 EIA approach and methodology, Volume I (Document reference 6.1, DCO Volume 6), no transboundary effects have been identified in relation to the Proposed Development, as there is no pathway for effects to occur outside the UK.

### Other relevant legislation

- 2.2.14 Other primary and secondary legislation relevant to the Proposed Development includes (but is not limited to) the following:
1. Environment Act 2021 [3]
  2. Conservation of Habitats and Species Regulations 2017 [4]
  3. The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 [5]
  4. The Waste (England and Wales) Regulations 2011 [6]
  5. The Bathing Water Regulations 2013 [7]
  6. Marine and Coastal Access Act 2009 [8]
  7. Natural Environment and Rural Communities Act 2006 [9]
  8. Countryside and Rights of Way Act 2000 [10]
  9. Water Resources Act 1991 [11]
  10. Water Industry Act 1991 [12]
  11. Wildlife and Countryside Act 1981 [13]
- 2.2.15 A more comprehensive list is provided in each topic chapter (ES Chapters 6 to 19, Volume I (Document reference 6.1, DCO Volume 6)) where relevant to that topic with an explanation of the relevance and implications for the Proposed Development.

## 2.3 Planning, legal and policy framework

- 2.3.1 Section 104 of the PA 2008 relates to decisions in cases where a National Policy Statement (NPS) has effect. As confirmed at paragraphs 1.1.4 and 1.4.6 of the National Policy Statement for water resources infrastructure (NPSWRI) *“...where a water resources infrastructure development is treated as a development for which development consent is required through section 35 of the Planning Act, the National Policy Statement will apply, unless otherwise stated in the section 35*

*direction*”. There is nothing in the original or variation of the section 35 direction that states otherwise. The NPSWRI therefore has effect in this case.

2.3.2 Section 104(2) requires that:

*“In deciding the application the Secretary of State must have regard to—*

*(a) any national policy statement which has effect in relation to development of the description to which the application relates (a “relevant national policy statement”),*

*(aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009;*

*(b) any local impact report (within the meaning given by section 60(3)) submitted to the Secretary of State before the deadline specified in a notice under section 60(2),*

*(c) any matters prescribed in relation to development of the description to which the application relates, and*

*(d) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State’s decision.”*

2.3.3 Section 104(3) states that *“The Secretary of State must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies”* (namely where doing so would lead to: a breach in international obligations; the SoS breaching their duties; would be unlawful by virtue of its enactment; where the SoS considers the adverse impact of a proposed development would outweigh its benefits or; where any condition prescribed for deciding an application otherwise than in accordance with the NPS is met).

### **National Policy Statement for water resources infrastructure**

2.3.4 An updated NPSWRI [14] (previously published in April 2023) was presented to Parliament in July 2025 and once made will have effect for the determination of the Proposed Development and engages Section 104 of the PA 2008 as outlined above.

2.3.5 In setting the framework for applications and decisions for water resources infrastructure the NPSWRI sets out:

1. Government policy and the urgent need for water resources infrastructure.
2. Principles against which applications are to be assessed, examined and determined.
3. Guidance on the assessment of likely construction and operational impacts of national water resources infrastructure and the specific planning requirements to be met by applicants.

2.3.6 Section 1 of the NPSWRI sets out the background, scope and geographical coverage of the NPS, and the infrastructure covered by the NPSWRI. Paragraph 1.4.3 of the NPSWRI also explains the significance of water resource management plans (WRMPs) in terms of supporting decisions on *“what additional water resources infrastructure is needed”*. Paragraph 1.4.7 of the NPSWRI says *“where a project that is not present in a final water resources management plan,*

*development consent applicants will need to make the case for the need for the project on a case-by-case basis...".* The Proposed Development is currently contained in an emerging draft WRMP. The DCO application presents the needs case in detail in the Case for the Project (Document reference 5.6, DCO Volume 5).

2.3.7 Section 2 of the NPSWRI sets out government policy and the need for water resources infrastructure, including:

1. Current and predicted future pressure on water availability due to climate, demographic, economic and environmental factors.
2. The Government's commitment to pursue a 'twin track approach' which requires both new water resources infrastructure and further demand management.
3. Quantifying the need for new water resources infrastructure, the need to maintain the current level of resilience, and the regional planning process.
4. The statutory role of WRMPs in identifying the need and the role of NSIPs in addressing this need.

2.3.8 Section 3 of the NPSWRI sets out the cross-cutting principles against which an application for development consent should be examined and determined. This includes a presumption in favour of granting development consent for nationally significant water resources projects which fall within the need for infrastructure established in the NPSWRI. It also sets out some general principles for EIA including:

1. *"The applicant should refer to Planning Inspectorate advice<sup>67</sup> on the production of Environmental Statements, which includes guidance on these aspects. This advice is particularly relevant when considering assessment areas identified in sections 3 and 4"* (paragraph 3.2.3).
2. *"Information gathered from the water resource management plan options appraisal assessments or information contained within section 4 [of the NPSWRI] may be useful to identify the significant effects of the proposed project"* (paragraph 3.2.4).
3. *"When considering significant cumulative effects, any Environmental Statement should provide information on how the effects of an applicant's proposal would combine and interact with the effects of other development (including projects for which consent has been granted...)"* (paragraph 3.2.6).
4. *"The Examining Authority [(ExA)] should consider how significant cumulative effects, and the interrelationship between effects, might as a whole affect the environment, even though they may be acceptable when considered on an individual basis or with mitigation measures in place"* (paragraph 3.2.7).

2.3.9 Section 3.5 of the NPSWRI addresses the need for applicants to comply with any legal and policy obligations on the assessment of alternatives including that *"the Environmental Impact Assessment Regulations requires projects with significant environmental effects to include a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the significant effects of the project on the*

*environment*”. This requirement is addressed within ES Chapter 4 Consideration of alternatives, Volume I (Document reference 6.1, DCO Volume 6).

- 2.3.10 Paragraph 3.6.2 also contains policies on the criteria for ‘good design’ for water resources infrastructure including the role and function of design principles (as discussed in ES Chapter 3 Description of the Proposed Development, Volume I (Document reference 6.1, DCO Volume 6)), and the provision of information on the approach to design evolution in the Scheme Development Report (Document reference 5.10, DCO Volume 5).
- 2.3.11 Section 4 of the NPSWRI sets out policy for generic impacts. This includes policy considering the construction and operational impacts of water resources NSIPs, including the assessments that an applicant will need to carry out, and the specific planning requirements that an applicant will need to meet, in order to gain development consent. It also sets out policies in relation to mitigation and decision making. Each topic chapter of this ES (ES Chapters 6 to 19, Volume I (Document reference 6.1, DCO Volume 6)) incorporates and addresses the relevant policies within the assessment.
- 2.3.12 The NPSWRI requires the consideration of the relevant river basin management plans when assessing the likely impact of any proposed development on the water environment. The Proposed Development falls within the South East river basin district, and Part 1: South East River Basin District River Basin Management Plan 2022 [15] applies.

#### **Marine policy documents**

- 2.3.13 In accordance with s104(2)(aa) of the PA 2008, in deciding an application for development consent, the SoS must have regard to the appropriate marine policy documents where development would be capable of affecting any part of the UK marine area.
- 2.3.14 The UK Marine Policy Statement (MPS) (March 2011) [16] and South Inshore and South Offshore Marine Plans [17] constitute the appropriate marine policy documents for the purposes of Section 104(2)(aa). Paragraph 4.5.13 of the NPSWRI also notes that the SoS should have regard to any relevant Shoreline Management Plans (SMP) – which for this area is SMP 13 (Selsey Bill to Hurst Spit) [18]. Compliance with the marine policy documents is demonstrated in the Planning Policy Statement (Document reference 5.5, DCO Volume 5) and ES Chapter 9 Marine biodiversity, Volume I (Document reference 6.1, DCO Volume 6).
- 2.3.15 The UK MPS was published in 2011 with the aim of contributing to the achievement of sustainable development in the UK marine area. Guidance to the UK MPS from 1 January 2021 (updated in September 2020) explains how references to EU law in the UK MPS should be interpreted from 1 January 2021 following the UKs withdrawal from the EU.
- 2.3.16 Marine plans are prepared by the Marine Management Organisation under the provisions of the Marine and Coastal Access Act 2009 [8]. There are currently 11 marine plan areas in England, which deliver the high-level marine objectives set out in the UK MPS. They guide those who use and regulate the marine area to encourage sustainable development. While marine plans apply only in their area, if a proposed activity may affect the plan area, this should be acknowledged and considered in the application and decision making.

- 2.3.17 Paragraph 4.5.13 of the NPSWRI notes that *“in the event of a conflict between any of these marine policy documents and the National Policy Statement, the National Policy Statement prevails for the purposes of decision making given the national significance of the infrastructure”*.

### **Other potentially important and relevant matters**

- 2.3.18 Other matters which the SoS may consider to be important and relevant in decision making (under the provisions of Section 104(2)(d) of the Act) may include other national planning policy and the local development plan policies of the host authorities. Local development plan policies may also inform Local Impact Reports prepared by relevant local planning authorities under Section 104(2)(b).

#### National Planning Policy Framework (December 2024)

- 2.3.19 The National Planning Policy Framework (NPPF) [19], revised in December 2024 (and subject to minor amendments in February 2025) sets out the government’s planning policies for England and how these are to be applied. The NPPF is supplemented by the Planning Practice Guidance providing guidance on topics contained within the NPPF and is periodically reviewed and updated.
- 2.3.20 The NPPF confirms at paragraph 5 that it does not contain specific policies for NSIPs (and by definition projects of national significance). Policies in the NPPF and the associated guidance are, however, likely to be important and relevant considerations under Section 104(2)(d) of the PA 2008 and the NPSWRI provides specific reference to the NPPF in relation to, for example, good design, flood risk and agricultural land.
- 2.3.21 Each technical topic therefore considers whether there is important and relevant guidance in the NPPF that may require consideration by the decision-making authority.

#### Other national policy and guidance

- 2.3.22 The series of advice pages published by the Planning Inspectorate (the Inspectorate) to inform applicants, consultees, the public and others about a range of process matters in relation to the PA 2008 are also relevant, in particular Planning Inspectorate (2025) Nationally Significant Infrastructure Projects: Advice on the Preparation and Submission of Application Documents [20] and Planning Inspectorate (2025) Nationally Significant Infrastructure Projects: Advice on Preparing Applications for Linear Projects [21] and the suite of advice on environmental matters [22].
- 2.3.23 Additional guidance in relation to specific topics may also be relevant (as expanded in each chapter), for example guidance in relation to good design is provided by the Planning Inspectorate (2025) Nationally Significant Infrastructure Projects: Advice on Good Design [23], National Infrastructure Commission (2020) in their Design Principles for National Infrastructure [24] and Project Level Design Principles (2024) [25].
- 2.3.24 This ES has had regard, where appropriate, to the Environmental Improvement Plan (2025) [26] which built on the vision set out in the 25 Year Environmental Plan - setting out proposals for the delivery of goals (and specific targets and

commitments in relation to each goal) for improving the environment through restoring nature and reducing environmental pollution.

Local planning policies and other considerations

- 2.3.25 Although the primary basis for making decisions on applications for development consent are relevant NPSs and marine policy documents (where applicable and not in conflict with NPS policy), local development plan policies may also be considered to be important and relevant.
- 2.3.26 NPS policies are, however, deliberately drafted to reflect the national significance of the relevant infrastructure and include tests which allow for exceptions or special circumstances which outweigh impacts - specifically recognising the need and benefits of NSIPs. Paragraph 1.1.9 of the NPSWRI therefore advises that, *“in the event of a conflict between these or any other documents and a National Policy Statement, the National Policy Statement prevails for purposes of decision making given the national significance of the infrastructure.”*
- 2.3.27 Where local development plan policies relate to generic issues, they will generally be covered by policy tests in the NPSWRI so are unlikely to be relevant to decision making (even where the policies are consistent and there is no direct conflict). Development plan policies are more likely to be relevant where they relate to planning designations or locally specific factors that are not replicated in the NPSs.
- 2.3.28 The local planning authorities defined as ‘host authorities’ and the documents which form their currently adopted development plans are listed in Table 2-1. Policies contained within these plans (and any relevant supplementary planning documents, action plans or other guidance) that are considered relevant to the environmental assessment of the Proposed Development are addressed in the topic chapters of this ES (ES Chapters 6 to 19, Volume I (Document reference 6.1, DCO Volume 6)).
- 2.3.29 South Downs National Park Authority (SDNPA) is not a host authority, however the Proposed Development is in proximity to the South Downs National Park (SDNP). Therefore, consideration is given to SDNPA policy, the potential impact of development on the setting of the SDNP as well as any potential impacts during the construction period.

**Table 2-1 Adopted development plan planning policy**

Determining authority	Proposed Development components	Development plan document
East Hampshire District Council (EHDC)	Use of Havant Thicket Reservoir for the storage of recycled water	East Hampshire District Local Plan: Joint Core Strategy (2014) [27] East Hampshire District Local Plan: Housing and Employment Allocations (2016) [28] East Hampshire District Local Plan Second Review saved policies (2006) [29]
Eastleigh Borough Council (EBC)	Section L: Lower Upham to Brambridge of the Pipeline between the Water Recycling	Eastleigh Borough Local Plan (2016-2036) Adopted April 2022 [30]

Determining authority	Proposed Development components	Development plan document
	Plant (WRP) site and Otterbourne Water Supply Works (WSW)	
Fareham Borough Council (FBC)	Section F: Boarhunt to Crockerhill of the Pipeline between the WRP site and Otterbourne WSW Intermediate Pumping Station (IPS)-F	Fareham Local Plan 2037 (2023) [31] Local Plan Part 3: The Welborne Plan (2015) [32]
Hampshire County Council (HCC)	Use of Havant Thicket Reservoir for the storage of recycled water Pipelines between the WRP site and Bedhampton Springs Section D: The WRP site to Portsdown Hill, Section E: Portsdown Hill to Boarhunt, Section F, Section G: Crockerhill to Wickham, Section J: Shedfield to the River Hamble, Section K: The River Hamble to Lower Upham, Section L and Section M: Brambridge to Otterbourne WSW of the Pipeline between the WRP site and Otterbourne WSW IPS-F IPS-G Break Pressure Tank (BPT) K Eastney Transfer Tunnel (TT)	Hampshire Minerals and Waste Plan (HMWP) (2013) [33]
Havant Borough Council (HBC)	Use of Havant Thicket Reservoir for the storage of recycled water Pipelines between Budds Farm Wastewater Treatment Works and the WRP site Pipelines between the WRP site and Bedhampton Springs Section D of the Pipeline between the WRP site and Otterbourne WSW Eastney TT	Havant Borough Core Strategy (2011) [34] Havant Borough Local Plan (Allocations) (2014) [35] Emsworth Neighbourhood Plan (2021) [36]
Portsmouth City Council (PCC)	Section D of the Pipeline between the WRP site and Otterbourne WSW BPT/IPS-E Eastney TT, Eastney Pumping Station and Release from the Eastney Long Sea Outfall	Portsmouth Plan (The Portsmouth Core Strategy) (2012) [37] Portsmouth City Local Plan (2006) (extant saved policies) [38] Milton Neighbourhood Plan (adopted July 2022) [39] Southsea Town Centre Area Action Plan (2007) [40]

Determining authority	Proposed Development components	Development plan document
		Somerstown and North Southsea Area Action Plan (2012) [41]
Winchester City Council (WCC)	Section D, Section E, Section G, Section H, Section J, Section K, Section L and Section M of the Pipeline between the WRP site and Otterbourne WSW  IPS-G BPT-K	'Your Place Your Plan Winchester District Local Plan' 2020 – 2040 [42]Denmead Neighbourhood Plan 2011 -2031 ('made' April 2015)
SDNPA	None	South Downs Local Plan Adopted 2 July 2019 (2014-2033) [45]

2.3.30 Additionally, although the South Downs National Park Partnership Management Plan 2026-31 [46] is not part of an adopted Local Plan, it is a material consideration and therefore has been given due regard by the ES topic chapters (ES Chapters 6 to 19, Volume I (Document reference 6.1, DCO Volume 6)) where relevant.

2.3.31 Emerging development plan policy may also be important and relevant subject to the stage of preparation and extent of outstanding objection and as with adopted local policy, where there is no conflict with NPS policy and where not already adequately covered by NPS policy where there is no direct conflict. The status of emerging policy for each local planning authority is set out in Table 2-2.

**Table 2-2 Emerging development plan planning policy**

Determining authority	Status of emerging development plan
EHDC	The Draft Local Plan 2021-40 (Regulation 18) document was published in 2024. The Draft Local Plan is due to be published for consultation by the end of July 2026. The submission and examination process will begin from November 2026, and if found to be 'sound', the Plan is expected to be adopted by August 2027.
EBC	EBC has started work on its review of the Eastleigh Local Plan 2016-2036 with Issues and Options consultation held between December 2024 and January 2025. Adoption of the plan review is scheduled for spring 2029.
HCC	The HMWP – Partial Update is currently under examination. The Proposed Modifications Consultation closed on 12 February 2026. Adoption of the Partial Update is scheduled for spring 2026.
HBC	Consultation on the Building a Better Future Draft Local Plan took place in summer 2025. Submission of the Building a Better Future Local Plan is planned for Q4 2026, and examination and adoption is scheduled for 2027.
PCC	The Portsmouth Local Plan was formally submitted to the Planning Inspectorate and the Secretary of State on 18 March 2026.
WCC	'Your Place Your Plan Winchester District Local Plan' 2020 – 2040 was adopted on 24 March 2026.
SDNPA	The Proposed South Downs Local Plan is expected to be published for formal comment (under Regulation 19) in May 2026.

- 2.3.32 Emerging policies have been considered by the ES topic chapters (ES Chapters 6 to 19, Volume I (Document reference 6.1, DCO Volume 6)) where appropriate to provide relevant context, though given the early stage of preparation of the emerging plans for most of the host authorities, they will have very limited relevance to decision making for NSIPs or projects of national significance.

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from  
Southern  
Water. 

The Southern Water logo graphic consists of three white, wavy lines of varying lengths, stacked vertically, resembling a stylized wave or water droplet.