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MMO Reference: DCO/2020/00003
Planning Inspectorate Reference: WA010002

27 August 2026

Dear Sir or Madam,

Planning Act 2008, Southern Water Services Limited , Proposed Hampshire Water Transfer and Water Recycling Order

This document comprises the Marine Management Organisation's ("MMO") initial comments in respect of the above Development Consent Order application ("DCO Application") in the form of a relevant representation.

This is without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This is also without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

The MMO's role in Nationally Significant Infrastructure Projects (NSIPs)

The MMO was established by the Marine and Coastal Access Act 2009 (the "2009 Act") to make a contribution to sustainable development in the marine area and to promote clean, healthy, safe, productive and biologically diverse oceans and seas.

The responsibilities of the MMO include the licensing of construction works, deposits and removals in English inshore and offshore waters and for Northern Ireland offshore waters by way of a marine licence. Inshore waters include any area which is submerged at mean high water spring ("MHWS") tide. They also include the waters of every estuary, river or channel where the tide flows at MHWS tide. Waters in areas which are closed permanently or intermittently by a lock or other artificial means against the regular action of the tide are included, where seawater flows into or out from the area.

In the case of NSIPs, the Planning Act 2008 (the "2008 Act") enables DCO's for projects which affect the marine environment to include provisions which deem marine licences. As a prescribed consultee under the 2008 Act, the MMO advises developers during pre-application on those aspects of a project that may have an impact on the marine area or



those who use it. In addition to considering the impacts of any construction, deposit or removal within the marine area, this also includes assessing any risks to human health, other legitimate uses of the sea and any potential impacts on the marine environment from terrestrial works.

Where a marine licence is deemed within a DCO, the MMO is the delivery body responsible for post-consent monitoring, variation, enforcement and revocation of provisions relating to the marine environment. As such, the MMO has a keen interest in ensuring that provisions drafted in a deemed marine licence ("DML") enable the MMO to fulfil these obligations.

Further information on licensable activities can be found on the MMO's website [here](#). Further information on the interaction between the Planning Inspectorate and the MMO can be found in our joint advice note 11 Annex B [here](#).

Relevant Representation

On the 10 July 2026 the MMO received notice under Section 56 of the Planning Act 2008 (the "PA 2008") that the Planning Inspectorate ("PINS") had accepted an application made by Southern Water Services Limited (the "Applicant") for a DCO Application (MMO ref: DCO/2020/00003; PINS ref: WA010002).

The DCO Application includes a draft development consent order (the "DCO") and an Environmental Statement (the "ES"). The draft DCO includes, at Schedule 9 a draft Deemed Consent under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009 (the "Deemed Marine Licence")(DML).

The DCO Application seeks authorisation for the construction, operation and maintenance of Hampshire Water Transfer and Water Recycling Project ("the project") which will use advanced treatment techniques to turn treated wastewater³ from Budds Farm Wastewater Treatment Works into purified recycled water at a Water Recycling Plant. Please find the MMO comments below.

Yours faithfully

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1. General comments on the application

1.1 General Comments

- 1.1.1 The MMO were given the opportunity to view and provide comments on the draft DML on the 08 April 2026 and 22 June 2026, prior to the submission to PINS. The MMO provided comments on the draft DML to the Applicant on 23 April 2026.
- 1.1.2 The MMO are aware that the draft Development Consent Order (DCO) and DML are still in early stages, and as such the MMO have not commented on any formatting errors or missing text, as it is presumed that these will be refined in future versions.

1.2 Major Comments

Marine Plans

- 1.2.1 The Applicant should demonstrate that they have considered whether the project adheres to all the relevant marine plans and policies in the area. The MMO recommends that this is presented in a single, coherent document instead of a number of separate references throughout the submission. The relevant marine plan policies that should be met can be identified using the Explore Marine Plans tool and policy information on the following website:

<https://www.gov.uk/guidance/explore-marine-plans>

- 1.2.2 MMO requires the Applicant to detail how the proposed project is compliant with the relevant marine plans by producing a marine plan policy assessment in one document. Once a comprehensive marine plan assessment has been provided, the MMO will provide comment on this.

2. Development Consent Order (DCO) and Deemed Marine Licences (DMLs)

2.1 DCO Major Comments

- 2.1.1 The MMO's position is that all references to the MMO and DML should be removed from Articles for Transfer of Benefit of the Order of the DCO. Our reasoning for requesting such amendments are as follows:

2.1.2 Benefit of the Order

In the MMO's initial comments on the draft DML, provided to the Applicant on the 8 April 2026, the MMO raised concerns with the inclusion of this provision. The MMO still have significant concerns with Part 2 Paragraph 5 of the DML For the benefit of the Secretary of State, the MMO would like to reiterate our position on this below:



- 2.1.3 It is the MMO's stated position that the DML granted under a DCO's should be regulated by the provisions of the Marine and Coastal Access Act 2009 (MCAA 2009), and in respect of this DCO application, specifically by all provisions of section 72 MCAA 2009.
- 2.1.4 PINS Guidance
As set out in Advice Note Eleven, Annex B – Marine Management Organisation | National Infrastructure Planning (planninginspectorate.gov.uk) where a developer chooses to have a marine licence deemed by a DCO, we, the MMO, “will seek to ensure wherever possible that any deemed licence is generally consistent with those issued independently by the MMO.”
- 2.1.5 Developers can seek consent for a marine licence directly with the MMO, reinforcing that in respect of marine licences, the Development Consent Order (DCO) process is nothing more than a mechanism for granting a marine licence – it is not a vehicle to amend established process and procedures, such as those for the transfer of a marine licence.
- 2.1.6 As the guidance further sets out, we, the MMO are responsible for enforcing marine licences regardless of whether these are ‘deemed’ by a DCO or consented independently, and it is therefore fundamental that all marine licences are clear and enforceable, and consistency is a key element in achieving this.
- 2.1.7 Section 72(7)(a) MCAA 2009 permits a licence holder to make an application for a marine licence to be transferred, and where such an application is approved for the MMO to then vary the marine licence accordingly (section 72(7)(b)).
- 2.1.8 Application to transfer or lease
In considering the proposed provisions of Article 7 DCO, Article 7(2), being read with Article 7(4) introduces a process involving the Secretary of State providing consent to the transfer in certain circumstances, rather than the MMO as the regulatory authority for marine licences considering the merits of any application for a transfer. The MMO note the proposed ability for the undertaker to lease the deemed marine licence for an agreed period of time – This specific power has been addressed separately below.
- 2.1.9 As the process proposed by the applicant is a significant departure from the current statutory framework in relation to marine licences, it has not been tested, it may therefore be the case that the applicant/undertaker will face unnecessary delays following its application as it is not clear that the Secretary of State will have a process in place to deal with requests of this nature and it is not clear what any consultation period with the MMO would be.
- 2.1.10 Duty to consult MMO
It is noted that the Secretary of State “must consult” the MMO (Article 7(6)) – however the obligation goes no further than this, the Secretary of State is not obligated to take into account the views of the MMO in providing its consent and there is no obligation for the MMO to be informed of the decision of the Secretary of State nor the undertaker.



- 2.1.11 In the regulatory sphere it strikes the MMO as highly unusual that a decision to transfer a marine licence or to lease is not the decision of the regulatory authority regulating in that area.
- 2.1.12 Power to vary the marine licence following a transfer
Despite the proposed changes to the process of transferring a marine licence it remains that neither the licence holder/undertaker nor the Secretary of State has any power to actually vary any terms of a marine licence and it will still therefore be necessary for the MMO to take steps to vary a marine licence to reflect that it has been transferred to another entity. To our mind the proposed mechanism for transfer of a marine licence does not actually work and in fact does little more than complicate the process.
- 2.1.13 There are also very real practical concerns as to how the proposed process would work in practice. The transfer of the licence would happen first, and then the marine licence would need to be varied. After the transfer of the licence, the new licence holder/undertaker would have a marine licence which would still be in the name of the license holder/undertaker who had transferred the licence. The new license holder/undertaker would have no authorisation to carry out any acts until the variation had taken place and until the variation had been affected the original licence holder/ original undertaker would remain liable for any actions undertaken. The procedure under section 72 MCAA avoids this issue entirely.
- 2.1.14 Transfer of “any or all of the benefit”
Article 7(2)(a) specifies the transfer of “any or all of the benefit of the provisions of this Order (including the deemed marine licence”. Article 72(7)(a) MCAA 2009 specifies:
“On an application made by the licensee, the licensing authority which granted the licence –
(a) may transfer the licence from the licensee to another person...”
- 2.1.15 As can be seen above there is no concept within the regulatory framework of MCAA 2009 for a marine licence to be transferred (or indeed leased) ‘in part’. This proposal by the applicant creates a new power and an additional level of complexity. The MMO would be grateful if the Applicant could indicate why it considers the ability to either transfer or lease ‘in part’ necessary.
- 2.1.16 The ability to transfer ‘part’ of a marine licence is a wholly new concept and would lack consistency with marine licences granted independently by the MMO – which would make a significant departure from the PINS guidance to applicants as set out above.
- 2.1.17 The MMO objects to the provisions relating to the process of transferring and/or granting the deemed marine licences set out in the draft DCO at Part 2, Article 7 insofar as these are intended to apply to the MMO and requests paragraphs 7(6) and 7(9) be removed in their entirety, with a clarification added to specifically exclude these provisions from applying to the MMO (with corresponding wording amended in the Deemed Marine Licences).



2.1.18 Grant to a lessee of a deemed marine licence

Article 7(2)(b) specifies a grant to a lessee for an agreed period of “any or all of the benefit of the provisions of the Order (including the deemed marine licences)”.

2.1.19 ‘Leasing’

There is however no mechanism either in the DCO or indeed in MCAA 2009 for a marine licence to be ‘leased’, specifically there is no provision for the licence ‘reverting’ to the licence holder after the agreed lease period – in practical terms it would be necessary to vary the marine licence to change the details of the licence holder at the beginning of the agreed period and then again at the end of the agreed period. It is not clear why the applicant considers it necessary to introduce the ability to ‘lease’ the whole or part of a deemed marine licence and we should be grateful for any clarity on this issue.

2.1.20 There are significant practical implications should the power to lease be created in this DCO as there is no procedure in place to affect such a lease. Any such lease would require a transfer or variation to allow lessee to claim the benefit of the licence, and then at the end of the lease period the marine licence would need to be varied to transfer it back to the lessor. Further information is required from the applicant as to the detail of this process, for example is it anticipated that the return of the licence to the lessor to be automatic and what would the process be if the lessee refused to transfer the marine licence back.

2.1.21 Article 7(2)(b) use of the term ‘grant’

The MMO would be grateful for clarification on the use of the term ‘grant’ in Articles 7, specifically 7(2)(b) in respect of granting the benefit of the marine licence to a lessee. Article 7(2)(a) refers to the transfer of the marine licence -as is the language of Article 72 MCAA 2009. As the granting of marine licences fall under section 69 MCAA and not section 72, can the applicant provide further explanation of its intention in this regard and its use of the term?

2.1.22 Enforcement

It is essential as the regulatory authority in the marine environment that the MMO is always fully aware who has the benefit of marine licence in order that it can carry out its regulatory function and where necessary take enforcement action. The mechanism the applicant is currently proposing for the transfer of a marine licence departs from this established process without clear justification as to why such a departure is necessary or appropriate in the circumstances.

2.1.23 Conclusion

It is firmly the MMOs position that the current regulatory framework should prevail, specifically that only a transfer of the whole of a marine licence should be permitted and not part of it and the transfer should be left entirely to the MMO to process outside of the Nationally Significant Infrastructure Project process. The provisions currently proposed by the applicant raise several significant issues and complicates a what is a straightforward and well-established statutory process and the MMO can see little or no benefit to this.



- 2.1.24 The MMO is concerned that the procedure proposed represents an unnecessary duplication of the existing statutory regime set out in s72 of the Marine and Coastal Access Act 2009 and that it will give rise to significant enforcement difficulties for the MMO. The MMO also considers that it has the potential to prejudice the operation of the system of marine regulatory control in relation to the proposed development. The MMO also regards the proposed procedure as cumbersome, more administratively burdensome, slower and less reliable than the existing statutory regime set out in s72 of the 2009 Act.
- 2.1.25 The MMO considers that little advantage is gained for the Applicant by these provisions and the tangible risks and disadvantages that it poses can be avoided by retaining the existing statutory regime in full.

2.2 DCO Interpretations, Articles and Requirements Comments

DML Schedule 9 Comments

- 2.2.1 Part 2 12(5), Part 3 20(2) - The MMO strongly considers that it is inappropriate to put timeframes on complex technical decisions of this nature. The time it takes the MMO to make such determinations depends on the quality of the application made, and the complexity of the issues and the amount of consultation the MMO is required to undertake with other organisations to seek resolutions. The MMO's position remains that it is inappropriate to apply a strict timeframe to the approvals the MMO is required to give under the conditions of the DML given this would create disparity between licences issued under the DCO process and those issued directly by the MMO, as marine licences issued by the MMO are not subject to set determination periods.
- 2.2.2 Whilst the MMO acknowledges that the Applicant may wish to create some certainty around when it can expect the MMO to determine any applications for an approval required under the conditions of a licence, and whilst the MMO acknowledges that delays can be problematic for developers and that they can have financial implications, the MMO stresses that it does not delay determining whether to grant or refuse such approvals unnecessarily. The MMO makes these determinations in a timely manner as it is able to do so. The MMO's view is that it is for the developer to ensure that it applies for any such approval in sufficient time as to allow the MMO to properly determine whether to grant or refuse the approval application.



3. Environmental Statement (ES)

3.1 Marine Biodiversity (Chapter 9) APP-088

- 3.1.1 Habitat loss associated with the Sustainable Drainage System (SuDS) has been scoped out for the operation stage. Table 3-1 of the design principles document (APP-076) referenced in paragraph 5 states that the “*design of the hard infrastructure comprised in the SuDS outfall will seek to reduce disturbance of the existing scour protection on the banks of Hermitage Stream and not protrude into Hermitage Stream more than existing outfalls*”. While the MMO do not necessarily have concerns regarding scoping this effect out at this stage of the Proposed Development, it is unclear to what extent the design of the proposed outfall will potentially replace existing habitat and the MMO would encourage the Applicant to provide additional rationale for scoping out the effects of habitat loss associated with the design of the SuDS, particularly regarding the design of the outfall pipe and with respect to a potential change in habitat. The outfall may become colonised by Invasive Non Native Species, and this should be assessed accordingly. The inclusion of a schematic to demonstrate the nature and design of the outfall pipe.
- 3.1.2 The MMO note that there are apparent errors in the references cited in support of paragraph 9.8.48. The Lower Thames Crossing Tunnel Boring Machine (TBM) information is cited as reference (105); however, reference (105) relates to Langstone Harbour Board commercial fishing information. Similarly, the horizontal directional drilling (HDD) measurement data are cited as reference (106), whereas the accompanying footnote identifies the confidential Mott MacDonald HDD report as reference (107). Reference (106) appears to direct the reader to the wider Lower Thames Crossing Examination Library rather than identifying the specific technical report from which the 130 decibel (dB) re 1 one-millionth of a pascal (μPa) prediction was obtained.
- 3.1.3 The acoustic metric associated with the quoted underwater sound levels is also unclear. The text refers to “a peak of 130 dB re 1 μPa at 100 Hertz (Hz) one-third octave band” and “an underwater sound peak of 100 dB re 1 μPa at 600 Hz one-third octave band”; however, it is not apparent whether these values represent peak sound pressure levels, Root Mean Square (RMS) sound pressure levels, sound exposure levels, or the maximum level within a one-third octave band spectrum. Consequently, the basis on which these values have been compared against thresholds for harm is not readily apparent from the information presented.



- 3.1.4 In relation to the cited Lower Thames Crossing TBM assessment, the report presents an underwater sound level of 130 dB re 1 μ Pa. The assessment uses a computer model called FINDWAVE which is designed to predict how vibrations travel through the ground and surrounding geology. The model is intended to estimate the underwater sound associated with these vibrations. However, the report does not clearly explain how the modelled ground vibrations were translated into the quoted underwater sound level of 130 dB re 1 μ Pa, making it difficult for the reviewer to independently follow the derivation of the reported underwater noise prediction.
- 3.1.5 Furthermore, Plate 7.1 appears to present a one-third octave band spectrum for the worst-case location, with a maximum level of approximately 130 dB re 1 μ Pa occurring at around 100 Hz. The assessment subsequently summarises the underwater noise prediction as “130 dB re 1 μ Pa”. Based on the presentation of Plate 7.1, this appears to represent the maximum level within the predicted one-third octave band spectrum, rather than an overall broadband underwater sound level. The assessment does not appear to present a broadband underwater sound level, nor explain how the spectral results were converted into or compared against the exposure metrics used to evaluate potential effects on fish and marine mammals. Consequently, it is difficult for the reviewer to fully understand the basis on which the predicted sound levels have been assessed against the cited effect thresholds.
- 3.1.6 The Environmental Statement concludes that “Given the information on underwater noise and vibration above, levels of vibration and underwater noise are predicted to be extremely low” (paragraph 9.8.49). There are a number of inconsistencies and uncertainties relating to the supporting references, acoustic metrics and presentation of the underpinning evidence (as outlined above). The MMO also note that there appears to be limited peer-reviewed literature directly quantifying underwater noise from tunnel boring activities in marine and estuarine environments, and this is acknowledged in the Environmental Statement. However, notwithstanding these limitations, the MMO consider it unlikely that underwater noise and vibration generated by the proposed Micro Tunnel Boring Machine would result in significant adverse effects on marine receptors. This is because the activity would occur beneath the riverbed and is generally expected to represent a lower underwater noise source than activities such as impact piling or other high-energy marine construction activities.

4. Summary

4.1 General Comments

- 4.1.1 The MMO still have concerns in relation to both the details within the ES and the conditions within the DMLs.



4.1.2 We strongly recommend that the Applicant continues to engage with the MMO throughout the process in order to ensure the assessment is as smooth as possible and agreements can be reached through the ongoing SoCG.

Yours faithfully

[Redacted Signature]

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