

To: HampshireWaterProject@planninginspectorate.gov.uk

Subject: WA010002 Hampshire Water Transfer and Water Recycling Project — request for procedural decisions before the Rule 6 letter: Statement of Common Ground with Portsmouth Water

For the attention of **the Examining Authority** (Ms Wendy McKay, lead member)

Dear Case Team,

I write as an already registered Interested Party. In light of information that has become available since the submission of my RR ([RR-018](#)), please place this email before the Examining Authority and accept it as **an Additional Submission**. This request is supported by Save Our South Coast Alliance – SOSCA ([RR-294](#)) and Water Matters Community ([RR-354](#)).

Summary

In short:

- (i) the Applicant presents its interface with Portsmouth Water as a matter of high agreement ([APP-058](#), item 3), but Portsmouth Water's own Relevant Representation ([RR-253](#)) shows that it is not agreed;
- (ii) the regulator itself, the Environment Agency, says of the modifications the draft Order would make to legislation that "many of [the] modifications would alter the Environment Agency's statutory functions in relation to this project, and others would give the Applicant unique powers" ([RR-102](#), page 4);
- (iii) meanwhile, what may be admitted to a public drinking-water reservoir, and when admission must stop, is not secured in the draft Order. It is being agreed privately between the two undertakers, in a draft Statement of Common Ground that has not been published, and the Environment Agency's permit for the discharge is unlikely to be in place when the Order is decided ([AS-020](#), row EA-EPD-011), a permit that, in any event, cannot control many of the contaminants of most concern to the assessment of environmental impact and risks.

The draft Order therefore gets things the wrong way round. It uses statute to settle the commercial relationship between the two companies and to alter the regulator's functions, but leaves the protection of the public and to the environment to a private agreement between them. I ask the Examining Authority to direct that the Portsmouth Water material (including the Statement of Common Ground) be published now, so that it can be reviewed and understood by Interested Parties before the Preliminary Meeting.

Why this concerns Interested Parties beyond Portsmouth Water

Havant Thicket Reservoir is where the recycled water would be stored. Portsmouth Water will hold that water and, in its own words, "answer for its wholesomeness" ([RR-253](#), paragraph 5.5.5) to the domestic population of more than 700,000 that it supplies in South East Hampshire and West Sussex ([RR-253](#), paragraph 2.2) - which includes me and most of the Interested Parties who support this request. The draft Order does not currently fix the quality of the water that may be admitted to the reservoir: the limits and cease-discharge triggers "are not secured in the Order" ([RR-253](#), paragraph 5.5.5), and the Applicant's "Environmental Statement therefore predicts an outcome which rests on an envelope expressly left to be agreed after the Order is made" ([RR-253](#), paragraph 5.5.4). Portsmouth Water says that its comments are "focused on the commissioning stage", and that it is "confident in the quality and wholesomeness of recycled water from a properly commissioned plant" ([RR-253](#), paragraph 5.5.6). That confidence depends on proper commissioning, and neither the commissioning acceptance criteria Portsmouth Water seeks nor the limits and cease-discharge triggers would be secured in the draft Order. Further, the same controls matter after commissioning, since the quality of the water admitted depends on the continuing operation and maintenance of the treatment plant, a matter of significant concern to customers.

What the two undertakers agree between themselves, and record in the undisclosed Statement of Common Ground I ask to see, is therefore at present the only control. That is the wrong place for it. For example, the quality of water admitted to a public drinking-water reservoir, and the circumstances in which admission must stop, are not matters that two statutory undertakers can properly settle by private agreement. They belong on the face of the Order, as requirements the Examining Authority can test (as part of the

environmental impact assessment) and the Secretary of State / Environment Agency can enforce. Interested Parties nevertheless need to see the Portsmouth Water Statement of Common Ground now so that the points in it can be understood by them well before the Preliminary Meeting (*i.e.* the point at which the Principal Issues and the timetable will be discussed).

The request

I ask the Examining Authority to make procedural decisions under [section 89\(3\) of the Planning Act 2008](#) now, before the Rule 6 letter is issued, as it did on the North Falls Offshore Wind Farm application (EN010119, [PD-005](#), 28 November 2024):

- (a) to direct the Applicant to publish forthwith, as an Additional Submission, its current draft Statement of Common Ground with Portsmouth Water (referred to by Portsmouth Water at [RR-253](#), section 6.1) and the limits and cease-discharge triggers for the admission of water to Havant Thicket Reservoir referred to at [RR-253](#), paragraphs 5.5.4 and 5.5.5, in whatever form they currently exist, together with the 2024 GHD water quality modelling report that Portsmouth Water asks to be provided [RR-253](#), item PW44);
- (b) to direct that Portsmouth Water be a named party to a bilateral Statement of Common Ground which covers, amongst other things, Articles 3(1)(b), 5, 9 and 46, Schedules 8 and 10 and the Schedule 2 requirements affecting the reservoir, records Portsmouth Water's proposed deletions and alternative wording, and is submitted in initial form before Deadline 1 (the first deadline in the Examination timetable); and
- (c) to direct the Applicant to correct, or to explain, the "GREEN" (high agreement) rating given to the Portsmouth Water interface at item 3 of its Potential Main Issues for Examination document ([APP-058](#)) which cross-refers to the unreleased dSoCG with Portsmouth Water.

Why the direction is needed now

1. The Potential Main Issues for Examination ([APP-058](#)) is the Applicant's own statement of what it expects to be examined. On its own terms it is "not exhaustive" and may "help to inform" the Examining Authority's Initial Assessment of Principal Issues, which is made on the application and the Relevant Representations together. Its only reference to Portsmouth Water is item 3, confined to the pipeline connection between Bedhampton Springs and the reservoir and rated Green — "a high level of agreement prior to Examination" - purportedly on the evidence of draft Statements of Common Ground, which do not include any published Statement of Common Ground with Portsmouth Water; the powers over the reservoir itself do not appear in the PMIE at all. **However, Portsmouth Water's own Relevant Representation now shows the opposite of agreement.** The Interested Parties supporting this request will submit at Procedural Deadline A (the deadline, set in the Rule 6 letter, for comments before the Preliminary Meeting) that the reservoir provisions - Articles 3(1)(b), 5, 9 and 46 and Schedule 8 etc - must be a Principal Issue in their own right, whatever the two undertakers may agree between themselves, with an early Issue Specific Hearing on those parts of the draft Order. Without the Statement of Common Ground with Portsmouth Water, they cannot make that submission on a properly informed basis.
2. The draft Order takes powers over another undertaker's asset. Articles 5, 9 and 46 and Schedule 8 would allow the Applicant to direct how Portsmouth Water operates Havant Thicket Reservoir, remove Portsmouth Water's protected right to abstract, give the Applicant a consent right over Portsmouth Water's applications to its own regulator, permit the Order to pass to a transferee that need not be a water undertaker, and disapply Portsmouth Water's byelaws (Article 46(1)(g)) and, so far as they are incompatible with the functions the Order confers on the Applicant, its constituting local legislation (Article 46(5)). Several Interested Parties have questioned the "*vires*" of those provisions under section 120(5) of the Planning Act 2008 ([RR-018](#); [RR-354](#); [RR-294](#)). These are questions about the Order itself, not about a private arrangement between two companies. The test is whether the provisions are "necessary or expedient" (section 120(5)(c) of the Act). The Environment Agency, whose functions Schedule 8 would change, says they appear "unnecessary", that "insufficient justification has been provided", and that many of them "would alter the Environment Agency's statutory functions ... and others would give the Applicant unique powers" ([RR-102](#), page 4). The Environment Agency has now also

recorded that it is taking legal advice on the inclusion of Article 5 and Schedule 8 ([AS-020](#), row EA-EX-001).

3. Portsmouth Water is now on the record as also opposing many of these provisions ([RR-253](#), including paragraph 5.1.7, paragraphs 5.2.7, paragraph 5.3.5, paragraph 5.4.8 and paragraph 5.5.7). As a reminder, the Applicant's PMIE rates this interface Green, "a high level of agreement prior to Examination" ([APP-058](#), item 3). Portsmouth Water's recent representation shows it is nothing of the kind.
4. In addition to all of the above, the reservoir-related provisions were disclosed by the Applicant late, or not at all, to the Inspectorate, the regulator and the asset owner. The Inspectorate's pre-application section 51 advice recorded that the article by which the Applicant then proposed to modify the reservoir planning permission was "blank" and "presumed to be novel", and that it "would have welcomed being given sight of this prior to submission" ([section 51 advice, 22 October 2025, WA010002-000129, ref 24](#); published in the HWTWRP library in February of the following year). The Environment Agency "only became aware of the full extent of the proposed modifications close to the time when the Application was made" ([RR-102](#), page 4). Portsmouth Water had still not received Schedule 8 on 19 May 2026, nine days before the application was submitted ([RR-253](#), paragraph 5.2.6), and received the Applicant's first draft Statement of Common Ground only on 28 July 2026 (paragraph 6.1); meanwhile, matters concerning its assets and consents are recorded as agreed in draft Statements of Common Ground with other bodies ([APP-059](#) to [APP-071](#)) to which it is not a party (paragraph 6.2) and which had been published. This is a further reason for the Examining Authority to require disclosure now, rather than to take the Applicant's account of its engagement at face value.
5. The Examining Authority's practice on North Falls ([PD-005](#)) - early initial Statements of Common Ground so that there is clarity about what is and is not agreed, each covering the Articles and Requirements of the draft Order with any proposed rewording supplied - would serve exactly that purpose here.

Without these directions the Examination would open with the central interface recorded by the Applicant as being agreed, the document said to record that agreement unpublished, and the only controls on the water to be admitted to the reservoir sitting in an arrangement between the two undertakers rather than in the Order - an arrangement that neither the Examining Authority nor any Interested Party has seen.

That matters all the more because, as several Relevant Representations have already explained, there is a regulatory gap: the Applicant's own Environmental Statement accepts that there are no agreed standards for most contaminants of emerging concern ([APP-098](#), paragraph 19.6.8; [RR-354](#); [RR-294](#); [RR-018](#)). That gap needs to be closed in the Order itself, not left to the two undertakers or to a permitting regime with no appropriate standards yet apply.

I am happy to provide anything further that the Examining Authority may find useful.

Yours faithfully,

Andrew Newbery