

Gate 2 Submission: Supporting Technical Report Annex 8: Legal and Regulatory Annex

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from
**Southern
Water** 

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1. Executive Summary

This annex reports on the potential legal and regulatory barriers to and issues associated with the progression of the Selected Option and the 'keeping warm' of the Back-Up Option so as to act as a viable alternative in the event of unacceptable delivery risks arising with the Selected Option. It sets out Southern Water's proposed approach to managing such legal and regulatory issues.

The key legal and regulatory risks and issues can be summarised as follows:

RAPID Gated Process

- a) There are ongoing issues and risks to be managed in relation to the misalignment of the accelerated Gates and the Regional Planning and WRMP24 timelines.
- b) Southern Water will be undertaking work as set out in Annex 13 to evolve the Selected Option and the Back-Up Option, and to undertake the activities set out in the Gate 3 Activity Plan and is seeking further funding for this.
- c) Southern Water is proposing a date of November 2022 for Gate 3, in order to enable Southern Water to further develop the technical and engineering aspects of the project and ensure that Southern Water can demonstrate that the Selected Option meets all legal, technical and regulatory requirements, allow preparation of WRMP24 and enable Southern Water to undertake non-statutory consultation.

WRMP

- a) Southern Water has updated its WRMP19 through its WRMP19 Annual Review submitted on 3rd December 2021. This includes the non-progression of the desalination solutions and selection of the Selected Option and Back-Up Option.
- b) Southern Water will also reflect the Selected Option and Back-Up Option in its WRMP24.

Regional Planning process

- a) Southern Water will need to continue to work with Portsmouth Water and WRSE to finalise the capacity of the WRP for the Selected Option, within the required timescales for the Selected Option, and for the WRSE Regional Plan and WRMP24.

S.20 Agreement

- a) Southern Water is engaging with the EA on specific, limited changes to be reflected in the s.20 agreement, and is also engaging to seek comfort that there will not be a risk of enforcement action under the s.20 agreement against Southern Water for selecting the Selected Option and the Back-Up Option through the Options Appraisal Process (i.e. for no longer using all best endeavours to progress the Base Case in WRMP19, but instead using all best endeavours on the Selected Option and Back-up Option and their identified programmes).

Planning and Development consent

- a) Southern Water will be undertaking a non-statutory consultation on the Selected Option in June 2022, and as such will be preparing materials to support this during Q1 and Q2 2022. The non-statutory consultation is also on the critical path for the consenting workstream. The Back-up Option will be included in the upcoming non-statutory consultation in June 2022 so that consultees can engage with, understand and provide feedback on the option as a potential back-up, in case SW is required to switch to that option should the Selected Option become undeliverable.

- b) Between now and Gate 3 Southern Water will be working with Portsmouth Water on the alignment of the consenting of the interface connections between Havant Thicket Reservoir and the Selected Option B4, ensuring that both current options can continue to be pursued without delay to the reservoir build. This could also include potential consenting approvals for the future alignment needs. Milestones for the alignment work will need to be informed by and aligned with the Portsmouth Water schedule so as to ensure no delay to the Havant Thicket Classic scheme and enabling for B4.
- c) Southern Water will continue to review the extent to which the Back-Up Option is needed during the period between Gate 2 and Gate 3 and will engage with RAPID if it considers that the deliverability risks associated with the Selected Option have been mitigated to a point where they are sufficiently low to enable the Back-Up Option to no longer be progressed and continued in this accelerated process.

DPC

- a) Southern Water will continue to engage with RAPID and Ofwat regarding DPC-related matters between Gate 2 and Gate 3, including proposals to align the timing and / or content of Gates and DPC Control Points to support the s.20 agreement's all best endeavours obligation.

2. Introduction

The purpose of this annex to Southern Water's Gate 2 submission is to address the RAPID requirement to provide information on 'potential regulatory barriers to solution's progression, guidance or changes required for the solution to progress' in the Gate 2 template.

This annex reports on the potential legal and regulatory barriers to, and issues associated with, the progression of the Selected Option and the 'keeping warm' of the Back-Up Option so as to act as a viable alternative in the event of unacceptable delivery risks arising with the Selected Option. It sets out Southern Water's proposed approach to managing such legal and regulatory issues.

The RAPID Gated Process Submission Guidance states the following of relevance to the content of this annex: *In assessing the solution sponsors' recommendation to progress or not progress in the gated process we will consider and address the following points:*

- *Is the solution in a preferred or alternative programme in relevant regional plan or WRMP (where applicable) to be operable by end 2027? (see Section 4 (WRMP))*
- *Do regulators have any significant concerns with the solution's inclusion or non-inclusion in a WRMP or regional plan or with any aspects that may impact its selection, to a level that they have (or intend to) represent on it when consulted? (see Section 4 (WRMP))*
- *Is there value in accelerating the solution's development to meet Southern Water's urgent requirement to address the supply deficit in its Hampshire area? (see Section 3 (RAPID Gated Process))*
- *Does the solution need continued enhancement funding for investigations and development to progress? (see Section 3 (RAPID Gated Process))*
- *Does the solution need the continued regulatory support and oversight provided by the Ofwat gated process and RAPID? (see Section 3 (RAPID Gated Process))*
- *Does the solution provide a similar or better cost / water resource benefit ratio compared to other solutions? (see Section 3 (RAPID Gated Process))*

- *Does the solution have the potential to provide similar or better value (environmental, social and economic value – aligned with the Water Resources Planning Guideline) compared to other solutions? (see Section 3 (RAPID Gated Process))*
- *Does a regulator or regulators have “showstopper” type concerns that have not been addressed through the strategic planning processes taking into account proposed mitigation? (see Section 7 (Planning and Development Consent))*

This annex is structured as follows:

- Section 3 – RAPID Gated Process
- Section 4 – WRMP
- Section 5 – Regional Planning Process
- Section 6 – Section 20 agreement
- Section 7 – Planning and Development Consent
- Section 8 - DPC

3. RAPID Gated process

3.1. Misalignment of accelerated Gated and Regional Planning and WRMP24 processes

Southern Water is participating in the RAPID Gated Process on an accelerated timeline compared with other water companies.

This brings ongoing challenges, insofar as there is a misalignment between the accelerated Gates for Southern Water’s submissions to RAPID and the Regional Planning and WRMP24 timelines and processes. This makes it more difficult to manage interfaces with the Regional Planning process, including changing modelling parameters and outputs and co-ordination of draft plans. It also creates challenges in the context of preparation of WRMP24, as explained in Section 4 of this annex.

3.2. Evolution of the Selected Option and Back-Up Option between Gate 2 and Gate 3

Southern Water has selected the Selected Option and the Back-Up Option as they may be developed in accordance with their Option Evolution Plans (see Annex 12). This is crucial to ensure that the options can meet future need to the 2040 horizon identified in the Future Needs Assessment.

The key implication of this is the scaling up of the options to meet the 87-95MI/d need identified in the Future Needs Assessment. Further work will be undertaken by Southern Water on an ongoing basis throughout the scheme development process to optimise the required capacity of the options and undertake further work in relation to the evolution of the options within the envelope set out in the Option Evolution Plan for each of the options.

Southern Water is seeking funding for the development of the Selected Option and the Back-Up Option in accordance with the Gate 3 Activity Plan and the Option Evolution Plans.

3.3. Date for Gate 3

Following engagement with RAPID, Southern Water wishes to propose a date for its Gate 3 of November 2022 but would welcome the opportunity to engage with RAPID on this date, including exploring potential later dates that may provide better opportunities for delivery.

This is 5 months later than the current anticipated Gate 3 date of June 2022, as set out in PR19: Final Determinations. The reasons for proposing this revised date for Gate 3 are:

- To enable Southern Water to further develop the technical and engineering aspects of the project and ensure that Southern Water can demonstrate that the Selected Option meets all legal, technical and regulatory requirements. This crucially includes work in relation to interface issues and constraints associated with the development of the Havant Thicket reservoir which are currently evolving through the planning process associated with the reservoir, and which are being actively managed by Southern Water and Portsmouth Water collaboratively;
- To allow preparation of WRMP24, so as to ensure that the Selected Option is reflected in Southern Water's Water Resources Management Plan and in a way consistent with the emerging Regional Plan, prior to an intended DCO application submission in Q4 2023;
- To allow Southern Water to undertake a non-statutory consultation on the Selected Option and secure high quality stakeholder feedback that will inform, validate and where appropriate adjust development plans; and
- To ensure better understanding of water need and resilience requirements in the region.

There is not expected to be any impact on the overall delivery date for the Selected Option as a result of moving Gate 3, and indeed moving the date for Gate 3 will help to ensure that key actions on the consenting critical path can be addressed on time.

We therefore request that RAPID agrees to a revised date for the Gate 3 submission of November 2022 or agrees to engagement with Southern Water to agree an alternative suitable date.

3.4. Points from RAPID Gated Process Submission Guidance

Is there value in accelerating the solution's development to meet Southern Water's urgent requirement to address the supply deficit in its Hampshire area?

- As noted in Section 6 (s.20 agreement), Southern Water is now using all best endeavours to progress and implement the Selected Option and is 'keeping warm' the Back-Up Option so that it is suitable to act as a viable alternative to the Selected Option should this be required to minimise risk of any potential delay to delivery.
- Southern Water considers that there continues to be value in accelerating, on the timescales requested, the Selected Option and Back-Up Option development to meet Southern Water's urgent requirement to address the supply deficit in its Hampshire area.

Does the solution need continued enhancement funding for investigations and development to progress?

- Both the Selected Option and the Back-Up Option need continued enhancement funding for investigations and development in order to progress according to the Gate 3 Activity Plan and the Option Evolution Plans for the Selected Option and the Back-Up Option. The Gated Process funding

is the only development funding provided in PR19 determination that allows Southern Water to develop the Selected Option and the Back-Up Option.

- In particular, the rationale for maintaining a Back-Up Option at this stage is set out in generic 'prudent operator' terms in Annex 5 (Options Appraisal Process), with more specific risks associated with the deliverability of the Selected Option set out in the Option Evolution Plans and in Section 7 of this annex.

Does the solution need the continued regulatory support and oversight provided by the Ofwat gated process and RAPID?

- Both the Selected Option and the Back-Up Option need continued regulatory support and oversight provided by the Ofwat Gated process and RAPID.
- Gate 3 will provide the opportunity for further input and scrutiny of Southern Water's development of the Selected Option and the Back-Up Option (as far as appropriate to manage consenting and deliverability risk, in the latter case).

Does the solution provide a similar or better cost / water resource benefit ratio compared to other solutions?

- Please refer to Annex 5 (Options Appraisal Process), which sets out the detailed OAP undertaken by Southern Water in order to identify the Selected Option and the Back-Up Option. This includes consideration of costs and water resource benefits.
- Southern Water considers that the Selected Option provides a similar or better cost / water resource benefit ratio compared to other solutions.
- Southern Water has also considered numerous other factors in identifying the 'best value' option and details are provided in Annex 5.
- All the options have been tested to determine whether they can supply the same need, identified in the Annex 4 (Water Resources Modelling). The MCDA ranked options by cost, by "net social impact" (which includes all environmental, social, economic and other factors considered), and finally compared the Options based on "Net social impact" achieved per £100m of cost. This ranking approach arguably most closely mirrors a 'Benefit-Cost-Ratio' in CBA of monetizable impacts and represents the two rankings which bring together all dimensions of Best Value into one ranking; considering the 'pound for pound' relative performance of the options. The Selected Option is the highest ranked in this evaluation once Option D.2 (which cannot meet the revised Supply Demand Balance Deficit) has been excluded. See Table 149 in Section 5 of Annex 5 for further details.

Does the solution have the potential to provide similar or better value (environmental, social and economic value – aligned with the Water Resources Planning Guideline) compared to other solutions?

- Please refer to Annex 5 (Options Appraisal Process), which sets out the detailed OAP undertaken by Southern Water in order to identify the Selected Option and the Back-Up Option. This includes consideration of the solutions' comparative potential to provide similar or better value (environmental, social and economic value – aligned with the Water Resources Planning Guideline).
- We consider that the Selected Option provides similar or better value (environmental, social and economic value – aligned with the Water Resources Planning Guideline) compared to other solutions.
- In particular, please refer to our MCDA and consideration of the Best Value Strategic Objective, which are relevant in this context.

4. Water Resources Management Plan

4.1. WRMP19

Southern Water's WRMP19 established the need for a new strategic resource option to address the projected deficit in Southern Water's Western Area in a 1:200 drought scenario. The WRMP19 Preferred Strategy is predicated on the import of water into SW Hampshire WRZs, and the generation of new water within those WRZs as a result of the deficit arising principally (but not exclusively) from the abstraction licence changes on the rivers Test and Itchen.

WRMP19 was prepared as an adaptive plan, and therefore identified not only a proposed solution in its preferred strategy (75Ml/d desalination plant at Fawley), but also potential alternative schemes which it was considered should be investigated as part of the preferred strategy in order to mitigate against risks relating to the potential non-delivery of any of the solutions in the preferred strategy. The strategy adopted and supporting information published in WRMP19 specifically highlighted the risks and uncertainties relating to implementation, and that alternatives would need to be investigated and potentially promoted, in order to secure the necessary improvements in the supply demand balance.

The key potential alternatives to be assessed in relation to the 75Ml/d desalination plant at Fawley were water re-use schemes to the Lower Itchen.

The WRMP19 preferred strategy also included additional bulk supplies from Portsmouth Water which themselves required the development of Havant Thicket reservoir. Annex 9 of WRMP19 expressly refers to the direct transfer pipe from Havant Thicket reservoir.

The WRMP19 Water Reuse options were to be subject to further optioneering, feasibility and assessment alongside the desalination options. This work has been undertaken and the position now reached as reported in our September 2021 Interim Update is that the desalination options are not considered consentable in the proposed locations, at this time, based on the assessment work that has been undertaken, and the direct Lower Itchen reuse option was confirmed as not acceptable to the Environment Agency and Natural England in the RAPID Gate 1 Final Decision.

Therefore, variants to the Lower Itchen reuse option have continued to be explored, utilising Havant Thicket reservoir for storage and blending, or through use of an environmental buffer near Otterbourne before treatment and utilisation by Southern Water. These are clear variants to the WRMP19 option involving a discharge to the Lower Itchen and then abstraction for treatment at Otterbourne.

Southern Water considers that the Selected Option and the Back-Up Option are each an evolution of the Lower Itchen water reuse options in WRMP19, with these options specifically designed to avoid and mitigate environmental risks and impacts associated with the direct discharge to the river Itchen SAC as proposed in WRMP19.

These Options, even at scales different than anticipated in WRMP19, and discharging to different locations, nevertheless remain in line with the WRMP19 alternative strategy of taking highly treated effluent and discharging it to the environment before re-abstracting and treating it for public water supply. The sources of water (the wastewater treatment works) and the destination (Otterbourne) are consistent with WRMP19.

4.2. WRMP19 Annual Review

Southern Water submitted its WRMP19 Annual Review to the Environment Agency on 3 December 2021, in which it reported that:

- The desalination options (including the 75Ml/d desalination plant at Fawley referred to in the WRMP19 preferred strategy) are not considered consentable in the proposed locations, at this time, based on the assessment work that has been undertaken;

- The Selected Option, following the Options Appraisal Process (as reported in Annex 5), for progression following Gate 2, is Option B.4;
- The Back-Up Option, following the Options Appraisal Process (as reported in Annex 5), for 'keeping warm' so as to be suitable to act as a viable alternative to B.4 in the event of unacceptable delivery risks arising in respect of the Selected Option, is Option B.5; and
- Options D.2 and B.2 are not capable of meeting the projected future need of 87-95MI/d (based on a 2040 horizon) without being evolved into Options B.4 and B.5 respectively and so their development will not be continued after Gate 2.

As noted above, Southern Water considers that the Selected Option and the Back-Up Option are each an evolution of the Lower Itchen water reuse options in WRMP19.

Southern Water has considered whether the selection of the Selected Option and the Back-Up Option represents a 'material change of circumstances' in relation to WRMP19.

There is limited guidance available as to what constitutes a "material change of circumstances". In England, the Water Resources Planning Guideline – Version 9 published in February 2021 ("the Guideline") provides at section 3.9 that *"...you must consult with the Environment Agency and/or Natural Resources Wales on any substantial changes that you wish to make to your final plan. For example, implementation of new resources not mentioned in your plan. If the changes are 'material' you must prepare a revised draft plan for re-consultation. Material changes are those likely to significantly impact customers through higher bills, changing their security of supply or significantly affect the environment. The Environment Agency and/or Natural Resources Wales will provide technical guidance to the relative governments."*

Southern Water considers that on the basis of information currently available there is a strong case that when compared with Fawley desalination, the selection of Option B.4 or B.5 would not significantly impact customers through higher bills, change their security of supply or significantly affect the environment. On the contrary, it is considered that Option B.4 and Option B.5 each has fewer environmental impacts than the option included within WRMP19, such that lesser environmental impacts would result. In addition, B.4 and B.5 are each less expensive to deliver than Fawley desalination, and so would not be expected to significantly impact customers through higher bills – indeed, both could result in lower bills than would have been the case with Fawley desalination. It is also not considered that selection of Option B.4 or B.5 would significantly impact customers through changing their security of supply as against the option in WRMP19.

On that basis, Southern Water has concluded that there is no material change of circumstances in relation to WRMP19 resulting from the selection of the Selected Option and the Back-Up Option at Gate 2.

Notwithstanding this position, however, preparation of WRMP24 is already underway, and through the preparation and consultation on draft WRMP24 there will be a mechanism for extensive consultation and engagement around the changes from the WRMP19 preferred strategy.

This is reported in Southern Water's WRMP19 Annual Review.

4.3. WRMP24

Southern Water will be undertaking pre-consultation in respect of WRMP24 in January and February 2022, at the time of publication of the emerging draft WRSE Regional Plan.

Southern Water recognises that there is an ongoing need to update and engage with stakeholders on the development of the Selected Option and the Back-Up Option in accordance with the Option Evolution Plans for those options and is committed to publicising and engaging with its stakeholders on its updated WRMP19 in parallel with the wider WRMP24 engagement taking place in Q1 2022.

Engagement on the Selected Option and the Back-Up Option will continue ahead of the planned submission of the draft WRMP24 to Defra in Summer 2022, and ahead of the planned RAPID Gate 3 submission in November 2022.

The initial proposed date for submission of draft WRMP24 to Defra by all water companies was August 2022. Defra is considering allowing a longer period for all water companies other than Southern Water (i.e. submission in October 2022) to enable better co-ordination between the WRMPs and the Regional Plan. In addition, Defra has indicated that it is considering bringing forward the required date of submission for Southern Water's WRMP24 to June 2022.

Discussions are ongoing with Defra and the Environment Agency to seek to agree an approach which does not prejudice the quality of Southern Water's WRMP24 or the ability to appropriately manage interfaces with the emerging Regional Plan.

However, assuming that Defra brings forward publication of Southern Water's WRMP24 to June 2022, it will result in the following risks, issues and challenges for Southern Water to manage:

- Southern Water will have considerably less time than other water companies to undertake the work required for WRMP24;
- The quality of assessment, modelling and analysis used to prepare WRMP24 is therefore at risk of being compromised;
- This would include regions outside of Hampshire, where further work is required in relation to potential options for WRMP24;
- Further mis-alignment between Southern Water's WRMP process and the timeline for the wider Regional Planning process and WRMP24 cycle, embedding further the challenges that have already affected SW's submissions in the context of the accelerated Gate timeline;
- Bringing forward the WRMP24 consultation is likely to sit badly with other key consultations which Southern Water needs to undertake, including a planned non-statutory consultation on the Selected Option in June 2022 as part of its consenting process, which is critical for progressing the option in time for delivery as close to 2027 as possible. This is likely to create the undesirable situation whereby consultees are being consulted on the same scheme twice in short order and without their feedback on the prior non-statutory DCO consultation being capable of being taken into account for the WRMP24 consultation in late summer and/or autumn 2022;
- The inter-relationships with other companies in the South East and other regions, particularly in the context of Regional Planning and WRMP24, mean that the forthcoming round of WRMPs are necessarily more inter-linked and inter-dependent than has hitherto been the case. If the Southern Water WRMP24 is accelerated ahead of other South East region WRMPs it will present significant risks to the collaboration and co-operation that is so critical to its success and the success of the wider regional planning process; and
- It is not clear that Defra and the EA would be able to undertake the necessary pre-publication checks on an accelerated SW WRMP24 in isolation of being able to check other company WRMPs for consistency at the same time, with the consequential risk that an 'early' Southern Water WRMP24 may not be capable of being approved for consultation until the other (linked) WRMPs were also ready, meaning that bringing forward Southern Water's WRMP24 would not bring any programme benefit for delivering the Selected Option.

Southern Water has engaged on these matters with the EA and Defra and understands that whilst they acknowledge these risks and challenges, in their view, the risk associated with them is outweighed by the benefit of having Southern Water's draft WRMP24 submission early, so that there is time to resolve any issues arising, such that the final published WRMP will be achieved to a timeline that supports overall consenting and delivery of the Selected Option.

Southern Water will seek to mitigate the risks outlined above through ongoing engagement with all stakeholders, including RAPID, Defra, the EA, Portsmouth Water and WRSE (though noting there is inevitably a much shorter timeframe within which to undertake such engagement), through clear communication with consultees under both the consenting and WRMP regimes, and through the further acceleration of work in respect of WRMP24 where this is possible.

However, it should be noted that certain elements, such as the significantly reduced time within which to undertake important modelling and other work, as well as the inter-relationship with the emerging Regional Plan, are unlikely to be capable of mitigation, due to the nature of the time constraint, and there inevitably, therefore, remains a residual risk to the quality and comprehensiveness of WRMP24.

4.4. Points from RAPID Gated Process Submission Guidance

Is the solution in a preferred or alternative programme in relevant regional plan or WRMP (where applicable) to be operable by end 2027?

- The Selected Option and Back-Up Option are variants of options included in WRMP19, and these have been included in Southern Water's WRMP19 2021 Annual Review, thereby updating WRMP19 to specifically include them.
- The Selected Option and Back-Up Option will also be included in WRMP24, which will be operable prior to the end of 2027 (the final version of WRMP24 is expected to be published by summer 2023 on the standard timeline for all water companies; Southern Water's intended DCO application is scheduled for Q4 2023).
- The Selected Option is reflected in the period prior to 2040 in current modelling runs of the WRSE Regional Plan. The Back-Up Option is available as an alternative in the context of the WRSE Regional Plan process, but is not currently selected, consistent with its status as a back-up.
- Please see Section 5 of this annex for further information to managing interfaces with the Regional Planning Process.

Do regulators have any significant concerns with the solution's inclusion or non-inclusion in a WRMP or regional plan or with any aspects that may impact its selection, to a level that they have (or intend to) represent on it when consulted?

- Southern Water has engaged with RAPID, and additionally with the EA, Defra, Ofwat, Natural England, DWI and Ofwat in relation to the identification of the Selected Option and the Back-Up Option through the Options Appraisal Process and has reported the selection of these options in its WRMP19 2021 Annual Review.
- Southern Water has not been made aware through such engagement of any significant concerns with the solution's inclusion, or the non-inclusion of other solutions, in a WRMP or Regional Plan, or of any aspects that may impact the selection of the Selected Option or Back-Up Option, or of any indications of any intention on the part of stakeholders to make representations to such effect when consulted.

5. Regional Planning Process

Southern Water has been working closely with WRSE since Gate 1, including on matters such as aligning the modelling for the Future Needs Assessment with the modelling being undertaken for the Regional Plan.

Southern Water has worked closely with WRSE in developing the Gate 2 submission. The Selected Option identified through Southern Water's Options Appraisal Process has also been supported by WRSE's regional modelling (financial and economic), which has identified the same preferred option before 2040. After 2040, WRSE identified additional alternative water supplies for addressing potential increases in requirements based on population growth, climate change and Environmental destinations.

The emerging regional plan that is due to be consulted on in January 2022 currently includes a WRP feed into Havant Thicket reservoir and a raw water transfer of up to nearly 100 MI/d from the reservoir to Otterbourne WSW and onwards to Testwood. That scheme is selected early in the planning horizon and is in line with Southern Water's evolved Option B.4 (the Selected Option).

The WRSE programme appraisal is being undertaken within the investment model, which has adopted assumptions around the profile of deficits under the various scenarios, to enable it to compare options and make selections. Similar assumptions have had to be made regarding some of the options to estimate their deployable outputs under normal and critical periods across the drought scenarios.

The Selected Option and the Back-Up Option will therefore require further modelling alongside the existing supplies within the water resources model to confirm actual utilisations as an integrated water supply system. Importantly, further modelling is required to confirm the precise size of the WRP required to feed Havant Thicket in order to enable it to provide the intended resource across the scenarios, taking into account the filling from Bedhampton Springs and utilisation of its storage capacity. We have undertaken further modelling as outlined in Annex 4, in order to identify a capacity envelope for the WRP for the Selected Option.

However, this will need to be refined within the envelope, using the regional water resource model to replicate the combined SW and PW needs and the regional plan solution. We will continue to work with PW and WRSE to finalise the capacity of the WRP for the Selected Option, within the required timescales for the consenting workstream for the Selected Option, and for WRSE and WRMP24.

6. Section 20 Agreement

Southern Water has entered into an agreement under s.20 of the Water Resources Act 1991 under which it is obliged to use all best endeavours to implement the Preferred Strategy published in WRMP19 (as may be revised by future water resources management plans). The Preferred Strategy in WRMP19 included a 75MI/d desalination plant at Fawley, as well as the exploration and development of water re-use schemes to the Lower Itchen.

As noted in Section 4, and reported fully in Annex 5 (Options Appraisal Process) and in Southern Water's WRMP19 Annual Review dated 3 December 2021:

- The desalination options (including the 75MI/d desalination plant at Fawley referred to in the WRMP19 preferred strategy) are not considered consentable in the proposed locations, at this time, based on the assessment work that has been undertaken;
- The Selected Option, following the Options Appraisal Process, for progression following Gate 2, is Option B.4; and
- The Back-Up Option, following the Options Appraisal Process, for 'keeping warm' so as to be suitable to act as a viable alternative to B.4 in the event of unacceptable delivery risks arising in respect of the Selected Option, is Option B.5.

The Selected Option and Back-Up Option will also be included in WRMP24, as explained in Section 4. Pending WRMP24 superseding WRMP19 as Southern Water's Water Resources Management Plan, Southern Water considers that the obligation in the s.20 agreement to use all best endeavours to implement the Preferred Strategy in WRMP19 relates to that Strategy as updated through Southern Water's WRMP19 Annual Review dated 3 December 2021. As such, Southern Water is progressing the Selected Option using all best endeavours and is 'keeping warm' the Back-Up Option so that it is suitable to act as a viable alternative to the Selected Option should this be required.

However, given that the Selected Option cannot be delivered to the original timescale set out in WRMP19 (2027), it will be necessary, and the EA has agreed, to make limited changes to the s.20 agreement to reflect the revised timelines and deliverables approved at Gate 2 and to ensure that SW can continue to meet its supply duty after 2027.

Southern Water is engaging with the EA on the precise, limited changes which should be reflected in the s.20 agreement and is also engaging to seek comfort that there will not be a risk of enforcement action under the s.20 agreement against Southern Water for selecting the Selected Option and the Back-Up Option through the Options Appraisal Process (i.e. for no longer using all best endeavours to progress the desalination options).

Any necessary changes will be negotiated after RAPID's Gate 2 Final Decision.

7. Planning and Development Consent

7.1. Approach for the Selected Option

The proposed approach in relation to consenting for the Selected Option is as set out in the Selected Option Consenting Strategy, the Option Evolution Plan for the Selected Option and the Gate 3 Activity Plan.

The consenting route review reaffirms SW's initial view at Gate 1 that a DCO is the strongly preferred route to consent for the Selected Option and the Back-Up Option, which is based on a number of factors including the need for the scheme and certainty of timely delivery, the scale and significance of the options, their complex terrestrial (and for B4, marine) interfaces and various consents required, and likely significant impacts across a 'larger than local' area.

The strategy also confirms that, based on current understanding of the characteristics of the options, access into the DCO consenting regime would not be automatic, i.e. the project does not currently automatically meet the thresholds for being categorised as a Nationally Significant Infrastructure Project (NSIP). Projects can however be directed into the DCO regime through a s.35 direction given by the Secretary of State – SW's consideration of the factors to support a request for such a direction suggests that a comprehensive case for such a direction can be made and will also put beyond doubt any uncertainty about thresholds.

After a s.35 direction has been given Southern Water will request a scoping opinion from the Secretary of State through the Planning Inspectorate (PINS). It is not possible for Southern Water to do this until after a s.35 direction has been given, and so this activity is on the critical path for the consenting workstream.

Southern Water will be undertaking a non-statutory consultation on the Selected Option in June 2022, and as such will be preparing materials to support this during Q1 and Q2 2022. The non-statutory consultation is also on the critical path for the consenting workstream. The Back-up Option will be included in the upcoming non-statutory consultation in June 2022 so that consultees can view and provided feedback on the option as a potential back-up in case SW is required to switch to that option should the Selected Option become undeliverable.

The Consenting Strategy for the Selected Option (see Annex 5) outlines the likely DCO application deliverables, the secondary consents and licences required in conjunction with development consent and potential land acquisition and temporary possession powers (identifying those which can be included in a DCO as part of a single authorisation), the approach to environmental impact assessment and potential

consenting risks. Key next steps are also set out, which will include ongoing review and refinement of this strategy. The Option Evolution Plan for the Selected Option indicates that it is not anticipated that the evolution of the Selected Option to meet a future need of 87-95 Ml/d will materially impact the current preferred consenting route, primarily due to the fact that the evolved Option footprint or capacity is not materially different to the current proposed Option and there is no substantial change to the nature of the proposed assets, they are simply marginally larger in capacity and footprint.

The Option Evolution Plan also highlights specific interface challenges associated with Havant Thicket reservoir, relating to the timing of construction of pipeline connections into the reservoir. Further work to address these challenges will be undertaken in collaboration with Portsmouth Water in during Q1 2022, with a particular focus on delivery schedule alignment.

Managing the timing of these interface works effectively may require enabling planning applications, permissions and/or permitted development for the specific interface works prior to Gate 3. A comprehensive understanding of this approach will further inform the overall approach to consenting for the Selected Option, with the current strongly preferred approach for the main works still being the DCO consenting regime.

Between now and Gate 3 Southern Water will be working with Portsmouth Water on the alignment of the consenting of the interface connections between Havant Thicket Reservoir and B4, ensuring that both current options can continue to be pursued without delay to the reservoir build. This could include potential consenting approvals for the future alignment needs. Milestones for the alignment work will be dictated by the Portsmouth Water schedule so as to ensure no delay to the Havant Thicket Classic scheme

The proposed approach in relation to consenting for the Selected Option is as set out in the Selected Option Consenting Strategy, the Option Evolution Plan for the Selected Option, and the Gate 3 Activity Plan.

In summary, there are a number of key consenting activities on the critical path between Gate 2 and Gate 3, namely:

- Section 35 direction – Southern Water will be requesting a s.35 direction from the Secretary of State in respect of the Selected Option in Q1 2022;
- EIA scoping – once a s.35 direction is given Southern Water will request a scoping opinion in respect of the Selected Option from the Secretary of State through the Planning Inspectorate; and
- Non-statutory consultation – Southern Water will be undertaking non-statutory consultation on the Selected Option in June 2022.

Enabling these critical activities to be completed is one of the key rationale's for Southern Water proposing a revised date of November 2022 for the Gate 3 submission.

7.2. Approach for the Back-Up Option

The Option Evolution Plan sets out the work that Southern Water will undertake in order to keep the Back-Up Option capable of acting as a viable alternative to the Selected Option as a prudent risk management measure, and in particular pending resolution of the consenting / deliverability challenges described above.

Southern Water will continue to review the extent to which the Back-Up Option is needed during the period between Gate 2 and Gate 3 and will engage with RAPID if it considers that the deliverability risks associated with the Selected Option have been mitigated to a point where they are sufficiently low to enable the Back-Up Option to no longer be progressed and continued.

It is important to note that the Back-Up Option will not progress through all the consenting steps that will be progressed for the Selected Option, as set out in the Gate 3 Activity Plan. However, it is considered that in the event of a required move to the Back-Up Option steps already taken such as non-statutory consultation would remain relevant and helpful, given that there are some overlaps as between the Selected Option and

the Back-Up Option. The Back-up Option will be included in the upcoming non-statutory consultation in June 2022 so that consultees can view and provided feedback on the option as a potential back-up, in case SW is required to switch to that option should the Selected Option become undeliverable.

7.3. Points from RAPID Gated Process Submission Guidance

Does a regulator or regulators have “showstopper” type concerns that have not been addressed through the strategic planning processes taking into account proposed mitigation?

Southern Water has engaged relevant regulators and stakeholders as described in Section 3.3.1 of Annex 9 (Stakeholder Engagement) in relation to the Options Appraisal Process it has undertaken to identify the Selected Option and the Back-Up Option. The draft results from the Options Appraisal Process were presented for comment to RAPID, Defra, the EA, Ofwat, Natural England and DWI, during July and August 2021, and an update following the Future Needs Assessment and Option Evolution plan stage was presented to RAPID, the EA, Natural England and the MMO in November 2021, confirming the choice of the Selected Option and the Back-Up Option.

No “showstopper”-type concerns have been raised that have not been addressed through the strategic planning processes taking into account proposed mitigation.

Further and more detailed mitigation measures will be developed through ongoing investigations and assessments, scheme development, engagement and consultation between Gate 2 and Gate 3.

8. Direct Procurement for Customers (DPC)

Direct procurement for customers (DPC) is a process for water companies to competitively tender for a third party (a competitively appointed provider, or CAP) to design, build, finance, operate and maintain infrastructure. At PR19, companies were expected to consider the use of DPC for large-scale enhancement projects that are expected to cost over £100 million TOTEX. Companies are expected to assess the value for money of delivering a project through DPC against an in-house delivery approach. Companies must look at whether the solution being delivered through DPC will meet their strategic and operational needs.

There are a number of different tender models which a company can use, which alternatively start the procurement earlier or later in the process of project development and pass more/less responsibility to the CAP. In this context, Southern Water is adopting the later model and is justifying its choice in the Gate 2 documents submitted. SW will also have to consider the main contractual arrangements with, and risk transfers to, the CAP and how the risk allocation and proposed approach impact on the attractiveness of the proposed project to potential investors. In addition, it will consider the allocation of financing risk and contingencies between itself and the CAP and the impact of revenue streams for each option on customer bills. This will need to be explained in the strategic, economic, commercial, financial and management case put forward by Southern Water in justifying its choice. These are things that will be substantially progressed between Gate 2 and Gate 3.

As the existing licences do not anticipate DPC projects, changes have been made to SW's licence to (i) set out a process for Ofwat approving DPC's solution and the contractual arrangements entered into between the company and the CAP; and (ii) assuming a DPC solution is approved by Ofwat, address how the company can charge customers in order to meet its payment obligations under the agreement with the CAP and determine what happens in the case of a change in the infrastructure requirement or a termination of the appointment.

The agreement between a company and the CAP needs to reflect the terms of the licence so that the company is able to meet its obligations without assuming a significant hiatus risk. The bidders/investors may resist some of these risks during the tender and negotiation process and further discussions may be required

with Ofwat before final agreement can be achieved as to the final licence conditions and associated clauses in the agreement between the company and the CAP.

Once an agreement is entered into between Southern Water and the CAP, the CAP takes significant responsibility for providing and maintaining the asset, however the company remains subject to its statutory and licence obligations as well as any contractual commitments it has made to the CAP.

The process for structuring a potential DPC project will take several months and will have to be discussed with and approved by Ofwat. Once approved by Ofwat to proceed as a DPC procurement it will then take several further months to engage the market, issue the invitation to tender documentation and proceed through the process of negotiation with bidders to the ultimate appointment of a preferred bidder.

As this is a pathfinder project, bidders are likely to identify issues which require significant negotiation both with the company and with Ofwat. This will relate to key risks which may affect the affordability of the solution. In turn, this may affect or cause a re-evaluation of the best value assessment and the comparison to delivery through an in-house approach. A significant period of months could elapse to a point where either there is an impasse with the bidders in relation to transfer of project risk to the CAP or to a point where all bidders submit bids which are not best value when compared to delivery through an in-house approach. The outcome would potentially require the company to revert to in-house delivery at a point when a very significant period of time needed to deliver the project on site has been lost and the overall delivery dates for the solution are no longer achievable.

Southern Water will continue to engage with RAPID and Ofwat regarding DPC-related matters between Gate 2 and Gate 3, including proposals to align the timing and / or content of Gates and DPC Control Points to support the s.20 agreement's all best endeavours obligation. Some potential solutions and recommendations for mitigating the above programme risks are:

- Focussing on one technical and regional solution to develop a model;
- Develop a fully costed in-house comparator which is time-related, showing how the cost of in-house delivery increases (due to inflation, price escalation and costs of acceleration) as the programme time available reduces. Ensure that a contingency for cost of risk borne by the company (which might be transferred to the CAP under the DPC approach) is built into the costs of in-house delivery;
- Identify “ramp-off” points in the process where, if certain metrics are met, the project will (with Ofwat’s consent) revert to in-house delivery – this is to avoid a point of “no return” when the DPC market becomes the only option. These dates would be linked to the RAPID Gates and DPC Control Points which may have to flex to reflect this key decision;
- Identify early works and progress that can be made with the development of the project (e.g. design, works, technology selection, site selection and compulsory acquisition) so that this progress can be “locked in” whether the project proceeds via DPC or in-house delivery; and
- While more costly and not a common approach, it would be possible to prepare for a non-DPC procurement in parallel, so that it is ready to launch should the DPC not prove best value. This could be maintained for as long as is needed until it is clear that DPC is feasible and the better value option.