

SOUTH EAST STRATEGIC RESERVOIR OPTION SECTION 35 DIRECTION REQUEST FOR THAMES WATER UTILITIES LTD

1. BACKGROUND

- 1.1 This statement is prepared by Thames Water Utilities Ltd. (**TWUL**) as a qualifying request for a direction from the Secretary of State under section 35 of the Planning Act 2008 (**Planning Act**) in relation to the South East Strategic Reservoir Option, or **SESRO (the Project)**.
- 1.2 TWUL is the appointed water undertaker for London and the Thames Valley under the Water Industry Act 1991. It supplies around 2.6 billion litres of water per day to around 10 million people and 220,000 businesses and is the UK's largest water and wastewater services company. Its activities span a large area of south-east England, over six separate Water Resource Zones. TWUL obtains its water supply from a mix of surface water sources (mostly from large storage reservoirs supplied from the River Thames and River Lee) and ground water sources.
- 1.3 The Project would comprise a new approximately 150 million cubic metre (Mm³) non-impounding reservoir (with a 650-hectare (ha) water surface area) in Oxfordshire, approximately 5km to the south-west of Abingdon as well as associated and ancillary development.
- 1.4 The Project would abstract and store water from the River Thames near Culham during high flow periods. This water could be released back into the river during low water flows or during periods of high demand for abstraction further downstream thereby providing additional resilience during drought conditions.
- 1.5 The Project sits within the context of both a national water resources framework and national and local planning policies which, together, drive the need and requirements for national water resource management. It has been identified as a key infrastructure component of both the revised draft Water Resources South East (**WRSE**) regional plan (August 2023)¹ (**rdWRSE regional plan**) prepared by WRSE in accordance with the *National Framework for Water Resources* (2020)² (**National Framework**) and TWUL's published Water Resources Management Plan 2024³ (**WRMP24**). The Project would provide a strategic water resource in the south-east of England to secure water supply for TWUL, as well as Affinity Water and Southern Water customers. Both Affinity Water and Southern Water are partnering with TWUL to develop the Project. The Project is identified as a key piece of infrastructure in Affinity Water's published WRMP24 and Southern Water's draft WRMP24.
- 1.6 The location and scale of the Project would meet the relevant criteria and thresholds for being a reservoir Nationally Significant Infrastructure Project (**NSIP**) under section 27(1)(a) and (c) of the Planning Act. However, because the Project is proposed to be delivered by an Infrastructure Provider (**IP**) under the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (**SIPR**)⁴ (which would not be a "water undertaker" as defined in section 27(3) of the Planning Act⁵), the relevant NSIP criteria in section 27(1)(b) of the Planning Act would not be satisfied. Therefore, the Proposed Development would not strictly meet all the criteria to be classified as a

¹ WRSE, *Revised Draft Regional Plan – Water Resources South East* (August 2023). Available at: [WRSE Revised Draft Regional Plan \(August 2023\) V1.0](#) (Accessed: 5 March 2025).

² Environment Agency, *Meeting our Future Water Needs: a National Framework for Water Resources* (2020). Available at: [National Framework for water resources summary.pdf](#) (Accessed: 5 March 2025).

³ Thames Water, *Water Resources Management Plan 2024* (2024). Available at: [Water resources | Regulation | About us | Thames Water](#) (Accessed: 5 March 2025)

⁴ Please see confirmation within Ofwat's PR24 Final Determination: [11.-PR24-final-determinations-Major-Projects-development-and-delivery.pdf](#) (Accessed: 5 March 2025)

⁵ As even though the IP would be appointed/receive a project licence under the Water Industry Act 1991 and SIPR regime, this is separate and would not mean it would become an appointed "water undertaker" under the Water Industry Act 1991.

NSIP and would not automatically be required to be (or be able to be) authorised by a Development Consent Order (**DCO**) under the Planning Act.

- 1.7 TWUL considers that the principal elements of the Project (given its scale and complexity, and the fact that it is of a scale that is equivalent to a NSIP) would benefit from being authorised by way of a DCO.
- 1.8 Accordingly, TWUL is seeking a section 35 direction from the Secretary of State for the principal elements of the Project to be treated as nationally significant infrastructure for which development consent is required. A proposed draft of the sought direction is at **Appendix 1**.
- 1.9 Subject to this request for a section 35 direction being granted, TWUL would apply for a DCO under the Planning Act for the Project.

2. **DESCRIPTION OF THE PROPOSED DEVELOPMENT**

- 2.1 The principal element of the Project to which this section 35 direction request relates (**the Principal Development**) is a non-impounding reservoir with the capacity to store approximately 150 Mm³ of water in Oxfordshire, located approximately 5km to the south-west of Abingdon.
- 2.2 Specifically, the Principal Development would comprise:
 - 2.2.1 'live' (usable) water storage of approximately 150 Mm³;
 - 2.2.2 a surface area of approximately 650-hectares and up to approximately 35 metres depth at the deepest point at full capacity; and
 - 2.2.3 an embankment created largely through the excavation of clay from a central borrow pit.
- 2.3 The Project as a whole would also comprise:
 - 2.3.1 a range of associated development (as defined by section 115(2) of the Planning Act), which may include, but is not limited to, tunnels, pumps and pipelines for the transfer of water, water treatment works, temporary works to support construction, works to support operation and maintenance, site accesses, temporary and permanent utility connections, highway diversions and landscaping, environmental mitigation, enhancement and compensation measures; and
 - 2.3.2 ancillary matters (including matters that fall within the scope of section 120 of the Planning Act).
- 2.4 As noted above, the Principal Development does not strictly meet the definition of an NSIP under section 27 of the Planning Act purely because of its proposed delivery method and not because of its scale or location (indeed, the Principal Development is well above the relevant size thresholds in the Planning Act). However, the Principal Development and Project as a whole would constitute key infrastructure in England and is identical in form and function to other NSIPs which do automatically qualify as being able to be authorised by a DCO under the Planning Act.
- 2.5 Accordingly, TWUL considers that the construction and operation of the Principal Development is a nationally significant development which should be authorised via the development consent regime under the Planning Act.

3. REQUEST FOR A SECTION 35 DIRECTION

3.1 Section 35(1) of the Planning Act states that the Secretary of State may give a direction for development to be treated as development for which development consent is required in circumstances where:

- 3.1.1 the development is, or forms part of, a project in the fields specified in section 35(2)(a) (**Criterion 1**);
- 3.1.2 the development will be wholly in an area set out in section 35(3) (**Criterion 2**); and
- 3.1.3 the Secretary of State considers that the project is of national significance, either by itself or when considered with one of more other projects or proposed projects in the same field (**Criterion 3**).

3.2 TWUL considers that the Principal Development meets all three criteria for the reasons set out below:

- 3.2.1 **Criterion 1:** The Principal Development is a non-impounding reservoir with the capacity to store approximately 150 Mm³ of water and is therefore clearly a project in the field of water thereby meeting one of the listed criteria in section 35(2)(a)(i) of the Planning Act;
- 3.2.2 **Criterion 2:** The Principal Development would be located wholly in England in accordance with section 35(2)(b) and 35(3)(a) of the Planning Act;
- 3.2.3 **Criterion 3:** The Principal Development is of national significance for the reasons set out below at section 4, as per section 35(2)(c)(i) of the Planning Act.

3.3 Section 35ZA(1) of the Planning Act states that the power in section 35(1) to give a direction in a case within section 35(2)(a)(i) is exercisable only in response to a qualifying request if no application for a consent or authorisation mentioned in section 33(1) or (2) has been made in relation to the development to which the request relates. TWUL confirms that no application for consent or authorisation mentioned in section 33(1) or (2) has been made in relation to the Principal Development to which this request relates.

3.4 Section 35ZA(11) defines a 'qualifying request' as:

'a written request for a direction under section 35(1) that:

- (a) specifies the development to which it relates, and*
- (b) explains why the conditions in section 35(2)(a) and (b) are met in relation to the development.'*

3.5 This request represents a 'qualifying request' because it is made in writing and specifies the development to which it relates (see 2 above) and the conditions in sections 35(2)(a) and 35(2)(b) are met (see 3.2 above).

4. CASE FOR NATIONAL SIGNIFICANCE

4.1 This section provides information to assist the Secretary of State to determine whether the Principal Development is of 'national significance' per section 35(2)(c)(i) of the Planning Act.

- 4.2 At the outset, it is important to reiterate that the sole reason for the Project, including the Principal Development, not being a NSIP under section 27 of the Planning Act relates to the proposed delivery method of the Project (which does not meet the criteria set out in section 27(1)(b) of the Act) and has nothing to do with its scale, complexity or location. All other criteria and thresholds set out in section 27 of the Planning Act for a reservoir NSIP are met by the Principal Development.
- 4.3 Section 27(1)(a) of the Planning Act requires a reservoir NSIP to be located in England, which the Principal Development would be.
- 4.4 Section 27(1)(c) of the Planning Act confirms the overarching principle that a reservoir that will store over 30 million cubic metres of water is of a scale that is nationally significant. In that context, it is important to note that the Principal Development is well above that threshold.
- 4.5 Given all of this, it is submitted by TWUL that it is a legislative drafting 'quirk' that results in the Principal Development not qualifying as a NSIP, and has nothing to do with its scale, significance or location.
- 4.6 Indeed, this fact appears to have been recognised by the Government. In a recent consultation on planning reforms⁶, it was stated (at Chapter 9) that:
- "We believe that the Planning Act 2008 could be amended to bring into the definition of NSIP...the construction, maintenance or operation of water infrastructure by a third party on behalf of a water undertaker"*
- 4.7 In its response to the same consultation, published in December 2024, the Government confirmed it would be considering how to take this forward.⁷
- 4.8 Accordingly, TWUL considers that the case is clear that the Principal Development is, by itself, of national significance and should be brought 'into' the Planning Act consenting regime.
- 4.9 However, to assist the Secretary of State further, TWUL has set out some additional factors below that it considers further demonstrates the national significance of the Principal Development, and the Project as a whole, namely:
- 4.9.1 the Project will play an important role in contributing to a resilient and secure water supply for people in the South East of England and is recognised as a needed and important piece of infrastructure in the rdWRSE regional plan and TWUL's published WRMP24. Additionally, the Project is identified as a key piece of infrastructure in Affinity Water's published WRMP24 and Southern Water's draft WRMP24;
- 4.9.2 the Principal Development is a significant and complex piece of infrastructure and the scale of its development and anticipated benefits are identical to other NSIPs which automatically qualify as being able to be authorised by a DCO under the Planning Act;
- 4.9.3 the Project would contribute to the UK's environmental objectives; and

⁶ *Proposed reforms to the National Planning Policy Framework and other changes to the planning system*. Available at: [Proposed reforms to the National Planning Policy Framework and other changes to the planning system - GOV.UK](#). Accessed: 5 March 2025.

⁷ *Government response to the proposed reforms to the National Planning Policy Framework and other changes to the planning system consultation* - GOV.UK. Accessed: 5 March 2025.

- 4.9.4 the Project requires a variety of consents, powers and rights from various organisations and authorities (including planning consent and temporary and permanent rights over land and acquisition of land) which will be best secured by a DCO.

Contribution to resilient and secure water supply and recognition in regional plans

- 4.10 Pursuant to requirements under the National Framework, TWUL has worked with five other water companies (as part of WRSE) to produce a regional plan which set out actions required to ensure resilient water supplies for future generations which has resulted in the rdWRSE regional plan.
- 4.11 The rdWRSE regional plan notes that without the implementation of the proposals in the plan, in a 1 in 500 year drought there would be a deficit in supplies of between approximately 1,200 and 2,700 million litres of water a day in the South East by 2040 and that this could increase to between 1,200 and 3,000 million litres per day by 2075.⁸ The Project (which includes the Principal Development) is identified as a key part of the regional solution.⁹
- 4.12 Under the Water Industry Act 1991, water companies are also required to produce Water Resource Management Plans (**WRMPs**) every five years. The water stressed status of south-east England was recognised by Ofwat (as the Water Services Regulation Authority) following the submission in 2019¹⁰ and, subsequently, funding was provided for water companies to investigate and develop Strategic Resource Options (including the Project) that will benefit customers and wider society and help protect and enhance the environment.
- 4.13 Accordingly, TWUL developed its (now published) WRMP24 (derived from the rdWRSE regional plan) which establishes the need for the Project (including the Principal Development).¹¹ As a key long-term infrastructure solution, the Project (including the Principal Development) needs to be consented and implemented rapidly to secure water supply for customers.
- 4.14 The National Policy Statement for Water Resources Infrastructure (2023)¹² (**Water Resources Infrastructure NPS**) sets out the need for, and UK Government policies relating to, development of water resources in England. Paragraph 1.4.5 of the Water Resources Infrastructure NPS states:
- 'If a nationally significant infrastructure project is included in a published final water resources management plan, the 'need' for that scheme will have been demonstrated in line with government policy.'*
- 4.15 The Project (including the Principal Development) is therefore of national significance by virtue of its role in securing water supply for customers as recognised by the rdWRSE regional plan and TWUL's WRMP24, as well as Affinity Water's published WRMP24 and Southern Water's draft WRMP24.

Scale of development and anticipated benefits

⁸ See rdWRSE regional plan, [1.17].

⁹ See rdWRSE regional plan, [12.24] – [12.35].

¹⁰ Environment Agency, *Water stressed areas – final classification 2021* (July 2021). Available at: <https://www.gov.uk/government/publications/water-stressed-areas-2021-classification>. Accessed: 5 March 2025.

¹¹ See, for example, Thames Water, *Keeping water flowing for the future: A summary of our Water Resources Management Plan 2024* (2024) (**rdWRMP24 overview**), p. 24. Available at: [WRMP24 - An overview](#). (Accessed: 5 March 2025).

¹² Department for Environment, Food & Rural Affairs, *National policy Statement for Water Resources Infrastructure* (2023). Available at: [National Policy Statement for Water Resources Infrastructure](#) (Accessed: 5 March 2025).

- 4.16 The Principal Development would comprise a non-impounding reservoir with the capacity to store approximately 150 Mm³ of water, which is well above the 'size threshold' for a reservoir NSIP contained in section 27 of the Planning Act.
- 4.17 The Project (including the Principal Development) has the potential to benefit and provide water to a variety of people in the South East (including customers of Thames Water, Affinity Water and Southern Water), mitigate local flooding, and add flexibility and greater resilience capability across the water resources network where the network is affected by the operational loss of an existing raw water storage water reservoir for planned or unplanned maintenance.¹³ The Project would also support a range of Water Resources Zones in the South East with the delivery of sustainability reductions in abstraction which will allow water companies to accelerate reductions and protect vital habitats across the region in a more flexible way.¹⁴
- 4.18 Accordingly, it is clear that the proposed scale and anticipated benefits of the Project (including the Principal Development) means that it is necessary and appropriate to designate it as a development of national significance, to be treated as a development for which development consent is required.

Contribution to UK's environmental objectives

- 4.19 The Project (including the Principal Development) would make a significant contribution to the UK Government's environmental objectives and policy priorities.
- 4.20 Paragraphs 3.4.2 and 3.4.3 of the Water Resources Infrastructure NPS recognise that new water resources infrastructure projects have the potential to deliver significant benefit and enhancements resulting in wider environmental net gains and progressing towards national policy priorities such as improvements to water quality.
- 4.21 In addition to the Project's primary objective of ensuring a secure and sustainable water supply in the South East, the following expected environmental benefits have been identified:
- 4.21.1 reduction of peak flows in the downstream reaches of the River Ock;
 - 4.21.2 creation of large areas of new river, ditch, wet woodland and wetland habitats;
 - 4.21.3 improvements to aquatic habitats and water quality within the new watercourse diversions compared to a highly modified baseline;
 - 4.21.4 flow augmentation in the River Thames during periods of low or very low flow providing additional resilience to the River Thames ecosystem (fish, macroinvertebrates) along with a potential overall improvement in water quality downstream; and
 - 4.21.5 increased access to nature.
- 4.22 Wider environmental benefits would also be achieved through abstraction reductions facilitated by the Project (including the Principal Development) in the South East including from sensitive habitats like chalk streams.

Consents best secured by single DCO

- 4.23 In the absence of a section 35 direction, TWUL would need to submit a planning application for the Project (including the Principal Development) to the planning

¹³ See rdWRSE regional plan, [12.30] – [12.31] and rdWRMP overview, p. 24 (see footnote 11).

¹⁴ See rdWRSE regional plan, [12.30] – [12.31].

authority or authorities within which elements of the Project are proposed to be located. It is anticipated that, subject to certain design elements being confirmed, the Project (including the Principal Development) could extend across at least two local planning authority areas.

- 4.24 Delivering planning permission for the Project using the Town and Country Planning Act 1990 (**TCPA**) increases the risk of not achieving timely project delivery. A DCO application supported by the rdWRSE regional plan, TWUL's (and its partners') WRMP24(s) and the Water Resources Infrastructure NPS would address these concerns, in relation to there being clear policy support in the context of the decision-making framework for DCO applications under the Planning Act.
- 4.25 A DCO application would also provide a single process for conferring statutory powers (including compulsory acquisition powers) and the majority of the requisite consents, permissions and licences for construction and operation of the Project, rather than requiring TWUL to secure those authorisations and powers of acquisition individually under the TCPA or Water Industry Act 1991, among others.
- 4.26 These alternative processes significantly increase the risk of delay for the Project. A section 35 direction would enable TWUL to "wrap up" the majority of these consents in a single application for a DCO which would be determined according to a comprehensive and inclusive examination process that all relevant and interested parties and authorities could fully participate in.
- 4.27 In turn, this would enable the Secretary of State to determine an application for the granting of the necessary powers, permissions, consents and licences in a coordinated, comprehensive and coherent manner with a predictable timeline to decision.
- 4.28 TWUL would also be able to provide a single authorisation dealing with the majority of the required consents to the IP constructing the Project rather than having to coordinate the delivery and management of multiple consents and authorisations thereby reducing the risk of delay and uncertainty within the proposed delivery model.
- 4.29 Minimising risk of delay and uncertainty is critical to enabling TWUL to deliver the Project (including the Principal Development) to address identified need and to meet TWUL's obligations to deliver the rdWRSE regional plan and its WRMP24.

5. **CONCLUSION**

- 5.1 TWUL requests that the Secretary of State gives a direction under section 35 of the Planning Act for the Principal Development because the Principal Development meets all relevant criteria under the Planning Act and is of 'national significance'.
- 5.2 The Principal Development is a project in the field of water which will be located entirely within England. It is of 'national significance' because the Principal Development (and the Project generally):
 - 5.2.1 will play an important role in contributing to a resilient and secure water supply for people in the South East of England and is recognised as a needed and important piece of infrastructure in the rdWRSE regional plan and TWUL's final published WRMP24 (as well as TWUL's partners' WRMP24s);
 - 5.2.2 is a significant and complex piece of infrastructure and the scale of its development and anticipated benefits are comparable to other NSIPs which automatically qualify as being able to be authorised by a DCO under the Planning Act - the reason the Project is not a NSIP is due to a legislative 'quirk' around delivery models, as opposed to its physical scale/complexity/location

(as the Principal Development meets all the requirements to be a NSIP in section 27 of the Planning Act aside from the delivery model);

- 5.2.3 would contribute to the UK's environmental objectives; and
 - 5.2.4 requires a variety of consents and permissions from various organisations and authorities (including temporary and permanent rights over land and acquisition of land) which will be best secured by a single DCO.
- 5.3 There are also major benefits to authorising the Principal Development via a DCO under the Planning Act including:
- 5.3.1 the comprehensive assessment and timely delivery of a complex and significant piece of water resources infrastructure supported by the rdWRSE regional plan and TWUL's WRMP24 (as well as TWUL's partners' WRMP24s);
 - 5.3.2 the ability to draw on strong and relevant national policy in relation to the Principal Development; and
 - 5.3.3 the ability to provide a single authorisation dealing with the majority of the required consents to the IP constructing the Principal Development thereby decreasing risks of delay and uncertainty.
- 5.4 TWUL wishes to request that should the Secretary of State direct that the Principal Development is development for which development consent is required, they (as part of that direction) confirm, for the avoidance of doubt, that the Water Resources Infrastructure NPS applies to the Principal Development, such that any application for development consent for the Project must be determined in accordance with section 104 of the Planning Act.
- 5.5 Finally, TWUL would further request that, should the Secretary of State propose that the Planning Act be amended such that the Principal Development would qualify as a NSIP prior to any DCO being granted for the Principal Development, the Secretary of State discusses with TWUL how any transitional and savings provisions contained in the amending instrument would apply to any section 35 direction granted pursuant to this request, including as to whether that direction should/would be revoked.

APPENDIX 1 DRAFT SECTION 35 DIRECTION

DIRECTION BY THE SECRETARY OF STATE UNDER SECTION 35(1) OF THE PLANNING ACT 2008 (AS AMENDED) RELATING TO THE SOUTH EAST STRATEGIC RESERVOIR OPTION PROJECT

By transmittal to the Secretary of State dated 19th May 2024 ("**the Request**"), Thames Water Utilities Limited ("**the Applicant**") formally requested that the Secretary of State exercise the power vested in the Secretary of State under section 35(1) of the Planning Act 2008 (as amended) ("**the Planning Act**") to direct that the Principal Development of the proposed South East Strategic Reservoir Option (SESRO) Project ("**the Project**") referred to in the Request be treated as development for which development consent is required.

In its Request, the Applicant advises that the Principal Development of the Project comprises a non-impounding reservoir with the capacity to store approximately 150 Mm³ of water, to be located in Oxfordshire ("**the Principal Development**").

Other elements of the Project include:

- associated development (within the meaning of section 115(1)(b) of the Planning Act) which may include, but is not limited to, tunnels and pipelines for the transfer of water, temporary works to support construction, works to support operation and maintenance, site accesses, temporary and permanent utility connections, highway diversions and landscaping, environmental mitigation, enhancement and compensation measures ("**the Associated Development**"); and
- ancillary matters ("**the Ancillary Matters**").

The Project can therefore be summarised as comprising:

- the Principal Development
- the Associated Development; and
- the Ancillary Matters.

The Secretary of State notes that the Request relates to the Principal Development.

Having considered the Request and the details of the Principal Development, the Secretary of State is satisfied that:

- the Principal Development does not form part of a project that automatically falls within the definition of a "nationally significant infrastructure project" ("**NSIP**") under the Planning Act and therefore it is appropriate to consider use of the power in section 35 of that Act;
- the Principal Development forms part of a project in the field of water in accordance with section 35(2)(a)(i) of the Planning Act;
- the Principal Development will (when completed) be wholly within England in accordance with section 35(2)(b) and (3) of the Planning Act;
- no application for consent or authorisation mentioned in section 33(1) or (2) of the Planning Act has been made in relation to the Principal Development to which the Request relates; and

- the Applicant's Request constitutes a "qualifying request" in accordance with section 35ZA(11) of the Planning Act.

Having considered the details of the Applicant's proposals as set out in the Request, the Secretary of State concludes that the Principal Development is nationally significant in accordance with section 35(2)(c) of the Planning Act; [the reasons for this are included in the Annex below].

The Secretary of State has taken the direction within the conditions as required by sections 35A(2) and (5) of the Act, and issues this Direction accordingly under sections 35(1) and 35ZA of the Act.

THE SECRETARY OF STATE HEREBY DIRECTS that the Principal Development is to be treated as development for which development consent is required. Any application for development consent for the Principal Development may also include any matters that may properly be included in a development consent order (in accordance with section 120 of the Planning Act) including ancillary matters (section 120(3)) and associated development (within the meaning of section 115(2) of the Planning Act).

THE SECRETARY OF STATE FURTHER DIRECTS in accordance with section 35ZA(3)(b) and (5) of the Planning Act that any proposed application for a consent or authorisation mentioned in section 33(1) or (2) of the Planning Act for the Principal Development is to be treated as a proposed application for which development consent is required.

THE SECRETARY OF STATE FURTHER DIRECTS in accordance with section 35ZA(5) of the Planning Act that the National Policy Statement for Water Resources Infrastructure (and any revised version of it) will apply and has effect in relation to any application for development consent for the Principal Development so far as the National Policy Statement is relevant to the application.

This direction is given without prejudice to the Secretary of State's consideration of any application for development consent which may be made in relation to all or part of the Project.

Signed by

[name of person signing]

[position or role of named person]

Authorised to sign on behalf of the Secretary of State

[Date]