



Article 4.7 Derogation Statement

To: Jonathan Maskell - Environment Agency

From: Simon Hughes	Email: Simon.Hugheas@agilia.co.uk
Date: 27 August 2020	Phone:
Ref: Havant Thicket Reservoir Project	cc: Joanne.farrar@atkinsglobal.com

Subject: Water Framework Directive Article 4.7 Derogation

Copy of email to Jonathan Maskell

Hi Jon

Thanks again for your email and attached letter of the 7th August, and your very helpful comments on the draft WFD assessment, which we will seek to take on board.

It was reassuring to hear that you agree with the project team's assessment of the need for an Article 4.7 derogation, on the basis of the potential risk of the deterioration in one or more Quality Elements (QEs).

Unfortunately at the time I was only able to provide the draft WFD assessment without all of the supporting documents that were still being developed. I'm pleased to report that all the final versions of documents will be available for scrutiny from the end of next week, and I will ensure that Laura has them in a form that makes them readily accessible.

I absolutely agree with you that the focus going forward must be to develop a robust mitigation and compensation strategy for the Hermitage Stream waterbody, which can be transparently and objectively evidenced. We share your view that this is at the heart of the Article 4.7 derogation, particularly in relation to 'Test a'.

I would like to take the opportunity to confirm that Portsmouth Water is fully committed to working with the Environment Agency to identify and deliver the reasonable level of habitat mitigation required to offset the impacts of the development on the waterbody. Furthermore PW would expect as a default approach to work with partners in the catchment to make the most of any reasonable opportunity to gear additional funding and support to achieve a greater positive impact for the waterbody.

In relation to each of the Article 4.7 tests, we would like to discuss with you our proposals to provide the following evidence as a way forward:

Test a:

- A summary of the WFD assessment's main findings including mapping of impacts and mitigation at QE level (including evidence and confidence) – for the two scheme elements covering risk of impacts on QE and also WFD objectives. We will split out the hydromorphological QEs as you have suggested – and keep the assessment high level;
- A jointly agreed proposal for delivering functional habitat and morphological mitigation, starting within Hermitage Stream catchment. We have incorporated a firm commitment to watercourse mitigation and compensation elements into the project's Outline Biodiversity (Terrestrial and Aquatic Environment) Mitigation and Compensation Strategy, which is a core part of our planning submission;
- We endorse the use of Defra 2.0 BNG metric. We continue to find challenges in its practical application to the project, and have concerns with the use of the linear BNG metric. We have developed a series of scenarios that illustrate the technical issues and some alternative suggestions. It will be important for us to resolve these first I think, so that we can develop a mitigation package we can both sign up to;
- PW has made a clear commitment in its planning submission to deliver the necessary and appropriate level of water environment habitat mitigation to offset the impacts

of the project. We are working under the assumption that these would be part of the subsequent Register of Environmental Actions and Commitments;

- We will refine and include the scheme's 'vision' for wider enhancement as you have suggested. There is a broad range of environmental measures which PW are committed to deliver as part of the project, including new wetlands, species rich grassland, woodland improvement and creation, re-wilding, a significant reduction in nitrate discharges to Langstone Harbour and improvements to terrestrial habitats; and
- Where appropriate, we will of course link the scheme mitigation measures to the WFD objectives for the Hermitage Stream waterbody.

Article 4.7 Test b:

- We would not propose to provide any additional evidence as part of this test.

Article 4.7 Test c:

- We propose to provide a summary of evidence held as part of the SEA and WFD assessments for Portsmouth Water's WRMP19 which have both been discussed and agreed with the Environment Agency.

Article 4.7 Test d:

- We propose to provide a summary of evidence held as part of the Portsmouth Water reservoir site selection report.

With regard to the questions and comments in relation to the hydromorphology, ecology, water quality and Mitigation & Compensation Strategy sections, I suggest if we could establish a dialogue between the experts on each side that would help make sure we properly understand them, and develop our responses to specific points raised accordingly.

I have attempted to summarise all of this into a set of objectives below:

- To discuss and agree the programme, governance and resources that will work to resolve this part of the project;
- To work out together the technical issues and options for the BNG metric and subsequent mitigation in some detail such that we can agree a way forward;
- To develop a common understanding of the issues, and options for their resolution; and
- To ensure the project has reasonable measures in place that are agreed by both parties to successfully resolve the Article 4.7 derogation.

So I think an outline plan for the way ahead starts with a series of meetings and workshops, in particular:

- Technical discussion on the Defra 2.0 BNG metric and the challenges PW face in applying it;
- Develop and agree options for a way forward on BNG (Technical and strategic);
- Develop and agree Options for a programme of work required to support Art 4.7 (Technical and strategic);

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- Technical discussions on the EA critique on the WFD sections;
- Agree work programme and resources; and
- Implement, review.

We can move promptly (notwithstanding leave commitments) on the first two points. We have a detailed assessment of the BNG's application to the Project with different scenarios that we can use as a basis for discussions.

The final versions of the WFD assessment and all supporting documents will be available from 4th September, there may be merit in the team having time to review these before we embark on the remaining points.

If you're happy with the suggested way forward, could you let me have some dates that might suit for the first three bullet points covering the technical and planning meetings above, and let me know the best way to transfer some large document files to you. I will ask Jim and Malcolm (copied into this email) to set up a short follow up call with Mike, as I will be leaving the project at the end of September.

I have no doubt that between us we will be able to chart a way through all of this, and fulfil Portsmouth Water's objective to deliver something really fantastic for all parts of the environment and the communities around Havant Thicket.

With best wishes

Simon

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