



Francis Taylor Building

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# Water Resources Management and Consenting

22 January 2021





# The sustainability challenges facing water and wastewater companies

Richard Aylard, Sustainability Director

# Sustainability challenges

Water, resilience and affordability



## Water resources

- Population, climate, environment, demand



## Resilience

- To cope with, and recover from, disruption, trends and variability



## Affordability

- Pressure on bills

# Sustainability challenges

## Wastewater



Water quality standards

Pollutants

- Chemical
- Micro-pollutants



Maximising energy generation

- Wet wipes and FOG



Drainage and flooding

- Population
- Climate change

# Becoming more sustainable

Challenges to making more sustainable decisions

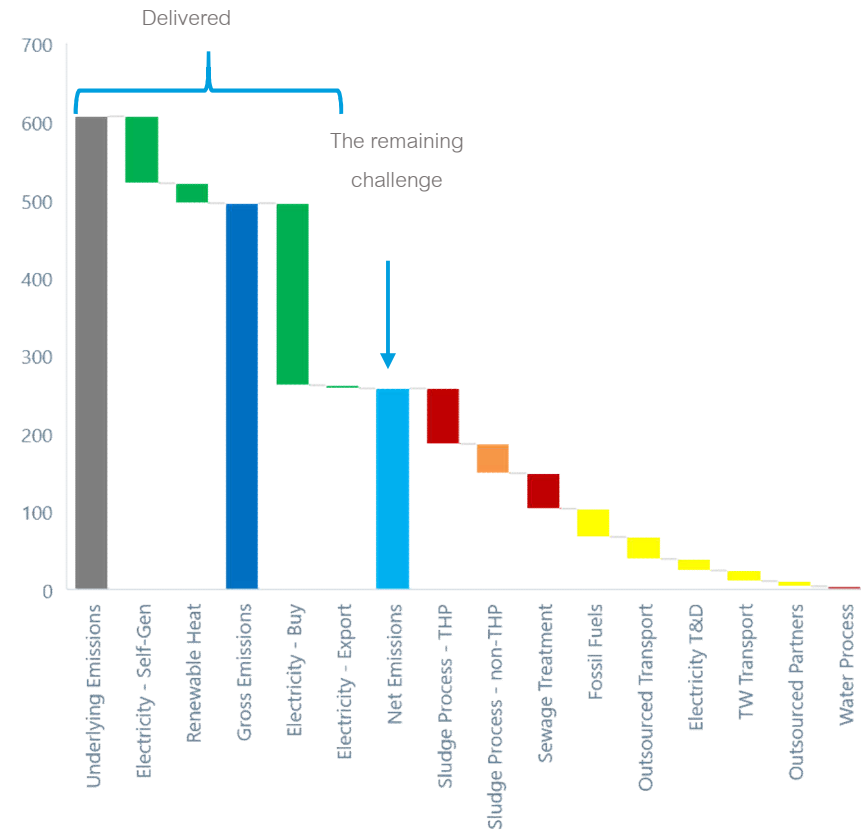
- We don't have a clean sheet of paper
- Dilemmas and potential for unintended consequences
- Considering multiple stakeholder views
- Various sustainability frameworks, accounting methods etc



# Net Zero by 2030

And go beyond by 2040

- Net Zero operational emissions by 2030
- Go beyond by 2040 – Net Negative?
- Already delivered 57% reduction
- Remaining 258kTCO<sub>2</sub>e emissions portfolio
- Looking at reducing embodied carbon of capital builds in parallel
- We can't deliver on our own





# Partnership working

## Nine Elms Development

- Nine Elms area had been served by Victorian 'combined sewers'
- Additional demand from the new US and Dutch embassies, the extension to the Northern Line, the Thames Tideway Tunnel and 21,000 new homes
- Working together with Lambeth and Wandsworth councils, the GLA, developers Ballymore, Tideway, Royal Mail, the US and Dutch embassies and the Environment Agency
- Combination solution of Thames Tideway Tunnel and eco-friendly SuDS



## To summarise







Thank you

A high-speed photograph of a water droplet falling into a pool of water, creating concentric ripples. The droplet is captured mid-fall, just above the point of impact. The background is a soft, out-of-focus blue-grey gradient.

# GETTING CONSENT FOR WATER RESOURCE INFRASTRUCTURE

**MICHAEL HUMPHRIES QC**

*Francis Taylor Building*

The background of the slide is a high-speed photograph of a water splash, showing the crown of the wave and the spray of water droplets. The water is a clear, light blue color. There are three large, white, semi-transparent 'X' symbols and one white circle symbol scattered across the image. One 'X' is in the top left, another is in the top right, and a third is in the bottom right. A white circle is in the top left, and another is in the bottom right.

## Some issues

- + DCO thresholds
- + The draft WR NPS
- + Establishing need
- + Locational issues
- + ... in accordance with the NPS
- + The planning balance
- + Mitigation
- + Recreation
- + Environmental Net Gain
- + Compulsory Acquisition

# Switching on the water resources provisions

PA 2008 – most  
provisions came into force  
in 2008/2010

## BUT

- s.27 (dams and reservoirs) and s.28 (transfer of water resources)
- only brought into force on 1 Jan 2018
- AND thresholds changed on 9 January 2019
- s.28A (desalination plant)
- newly introduced on 9 January 2019

# Water resources thresholds

## Original

- + s.27 (dams and reservoirs)
  - volume of water held back / stored expected to exceed 10m m<sup>3</sup>
- + s.28 (transfer of WR)
  - volume of transferred water expected to exceed 100m m<sup>3</sup>/y

## Current

- + s.27 (dams and reservoirs)
  - volume of water held back / stored expected to exceed 30m m<sup>3</sup>; or
  - deployable output expected to exceed 80m l/d
- + s.28 (transfer of WR)
  - volume of transferred water expected to exceed 80m m<sup>3</sup>/y
- + s.28A (desalination)
  - deployable output expected to exceed 80m l/d



The construction or alteration of WR NSIP can only be undertaken by a “*water undertaker*” as defined by the WIA 1991

*These are the very bodies that have duties to produce*

*Water Resource Management Plans and Drought Plans*

# What about projects below the PA 2008 thresholds?

- + applications fall within the TCPA regime
- + ... unless the applicant seeks a section 35 direction that the project be treated as a PA 2008 project
- + why might an applicant want to do that
  - o clearer policy context (when the final WR NPS is published)
  - o single consent for (say) long WR transfer pipeline
  - o wrap planning consent etc and compulsory acquisition into single procedure
  - o raise the project to national / regional importance (not just local)
- + why might an applicant not want to do that
  - o positive local determination could be quicker
  - o local accountability / acceptability might be stronger
  - o where strong local policy support and little opposition



Department  
for Environment  
Food & Rural Affairs

## Draft National Policy Statement for Water Resources Infrastructure

November 2018

- + The latest draft WR NPS is dated November 2018
- + The AoS for the draft NPS is also dated November 2018
  
- + The date for the publication of the actual WR NPS has not been announced, BUT ...



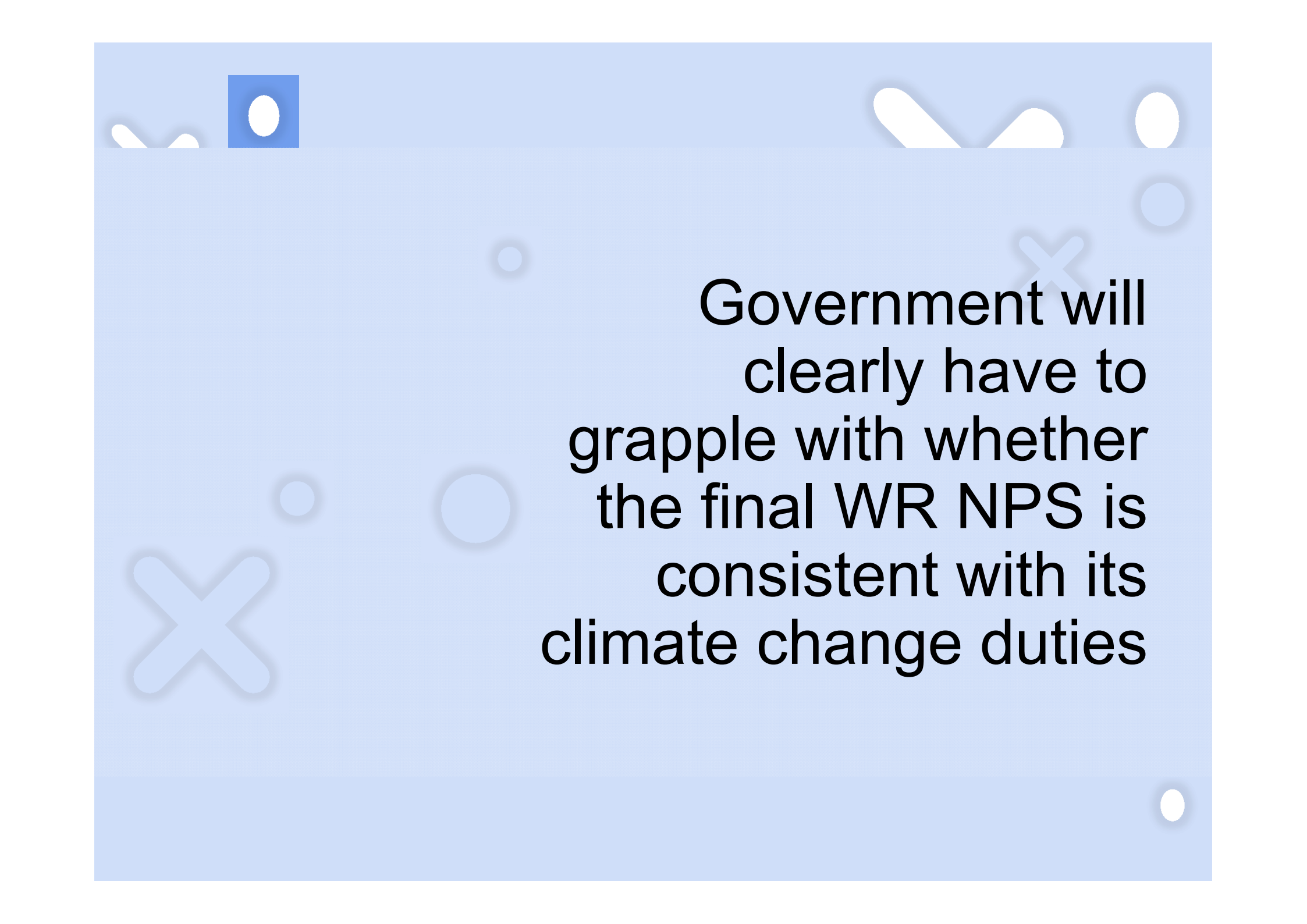
# WHAT HAPPENED IN JUNE 2019?

*THE GOVERNMENT AMENDED THE  
CLIMATE CHANGE ACT 2008 TO ADOPT A  
NEW 2050 CARBON TARGET OF 'NET  
ZERO'*

# Planning Act 2008 and climate change

- + s.5(7) states that *“A national policy statement must give reasons for the policy set out in the statement.”* and s5(8) states that *“The reasons must (in particular) include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change.”*
- + NB This was one of the provisions considered by the Supreme Court in *Heathrow Airport Limited v FOE and Plan B Earth* [2020] UKSC 52

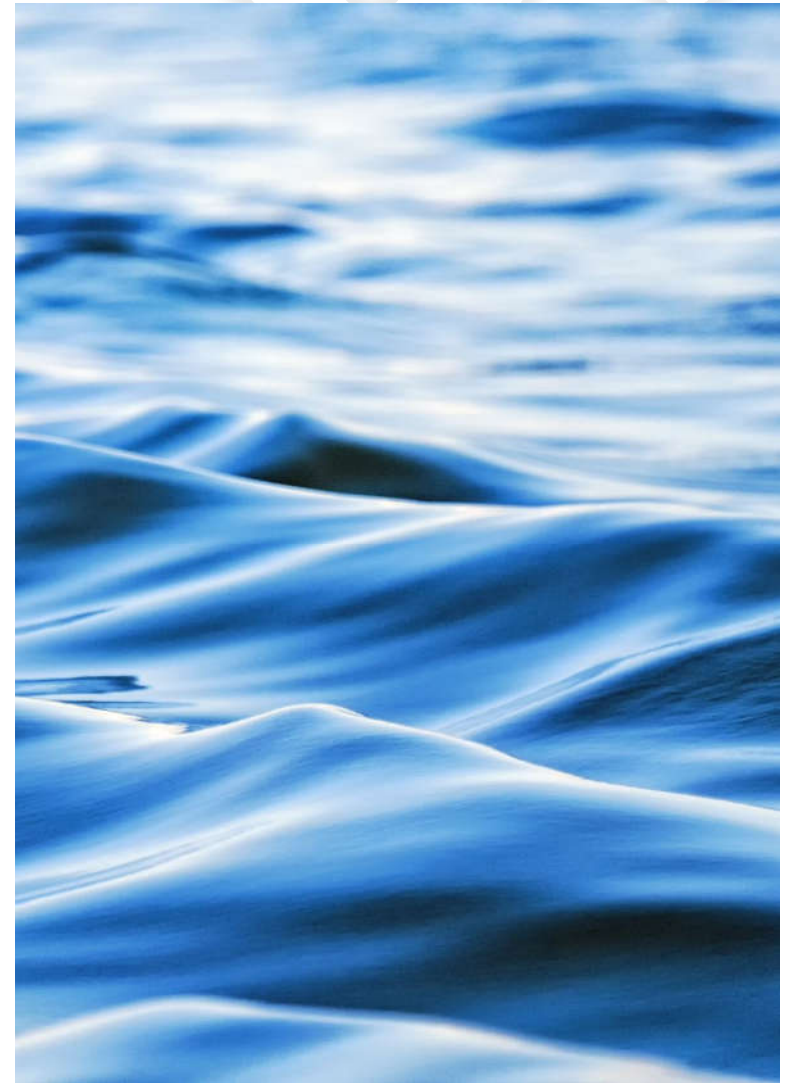


The background is a solid light blue color. It features several white decorative elements: a square with a circle inside in the top left, a large 'X' in the bottom left, and various circles and abstract shapes scattered throughout. The text is centered on the right side of the slide.

Government will  
clearly have to  
grapple with whether  
the final WR NPS is  
consistent with its  
climate change duties

## How is need to be established?

- + The draft WR NPS is quite clear (#1.4.5):  
*If an NSIP is included in a published final WRMP, the need for that scheme will have been demonstrated in line with government policy, and the applicable statutory requirements, and does not need to be revisited as part of the application for development consent.*
- + The EIA Regs and the Habitats Regs may require some explanation of the 'alternatives' considered in meeting identified need and the main reasons for the solution chosen
- + Water undertakers may, therefore, need to explain the WRMP process and how they selected the project(s) to meet need
  - o Indeed, ExAs may be reluctant to completely 'outsource' project specific need to another process
- + Furthermore, objectors may seek to challenge the 'weight' to be attached to the need for a project
  - o for example, is the introduction of the 'net zero' target in July 2019 a 'change of circumstances' that should have caused a review of a WRMP



# To what extent is 'location' settled?



- + The (draft) WR NPS is not itself location specific
  - o Again, ExAs may want to understand why a particular location is the most appropriate for (say) a new reservoir
- + In other words, can 'need' be better met in some other location
- + Regulators are often reluctant to turn up at examinations to support projects – early engagement with regulators may, therefore, be important

# ... in accordance with any relevant NPS (section 104(3))

- + The WR NPS may itself impose 'red lines' on the grant of development consent

see for example (#4.7.19)

*Where the proposed development will lead to substantial harm to or the total loss of significance of a designated heritage asset, the Secretary of State will refuse consent unless it can be demonstrated that the substantial harm or total loss of significance is necessary in order to deliver substantial public benefits that outweigh that loss or harm*

- + Although see R (Asda Stores) v Leeds CC [2021] EWCA Civ 32 at #36 for discussion on the words "should be refused" in para 90 of the NPPF – those words do not mean 'must be refused' as there is still a planning balance
- + The ExA will, however, closely scrutinise a project to see whether 'in accordance with' with the requirements of an NPS



# The overall balance

s.104(3)/(7) introduces a 'balance' between 'benefits' and 'impacts'

Impacts should be identified through an Environmental Statement

But promoters will need to take particular care to articulate clearly the benefits of a project (including that it meets 'need')







## Mitigation ...

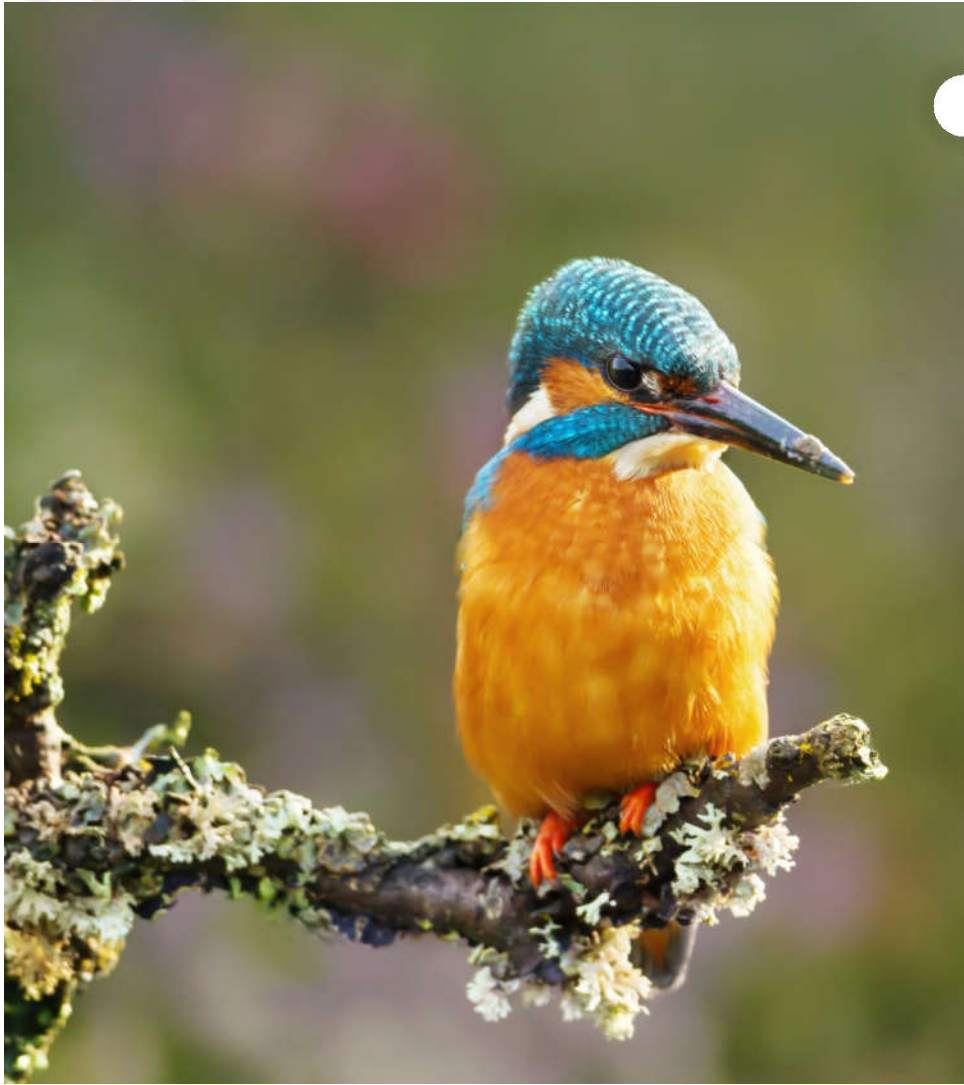
- + In circumstances where the examination of need / location may be constrained by the NPS, an ExA will focus long and hard on impacts and their mitigation
- + This is likely, therefore, to be the most closely scrutinised of all issues at examination
- + But how much mitigation is enough?



# Recreation

- + Section 3 of the WIA1991 places certain duties on water undertakers in relation to the provision of recreational facilities.
- + Regulation 6(6) of the IP (Applications: Prescribed Forms and Procedure) Regs 2009 states that:  
*“If the application is for the construction of a dam or reservoir the application must be accompanied by a statement setting out what if any recreational amenities will be made available.”*
- + #4.13.9 of the draft WR NPS adds that information gathered, for example, in response to sections 4.13 (socio-economic effects) and 3.12 (health effects) could be used to justify any associated recreational or educational amenities.





... and what about  
the concept of  
Environmental Net  
Gain (ENG)




The draft WR NPS states as follows:

### *3.4 Environmental Net Gain*

*(#3.4.3) Applications for development consent must be accompanied by a statement demonstrating how opportunities for environmental enhancement have been incorporated into the detailed design (including any relevant operational aspects) of the project. In particular, the statement should summarise how environmental enhancement has been assessed and quantified. The statement should identify any relationships to other areas of assessment or requirements within this NPS, including net gains for biodiversity (see section 4.3).*

### *4.3 Biodiversity and nature conservation*

*(#4.3.5) The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests. (See section 3.4 also on environmental net gain).*



## ... but ENG appears not to be the same as the 'biodiversity gain' regime in the Environment Bill

- + Clauses 92ff and sch 14 of the Environment Bill apply the new 'biodiversity gain' regime to planning permission under the TCPA 1990 regime, but not to the grant of development consent under the PA 2008 regime
- + The 'biodiversity gain' regime in the Environment Bill introduces concepts such as the 'biodiversity site register' and 'biodiversity credits'
- + The draft WR NPS pre-dates the Environment Bill, but it is not entirely clear what the relationship is between 'environmental net gain' in the draft WR NPS and the 'biodiversity gain' regime in the Environment Bill
- + But some understanding may be gleaned from the Planning Practice Guidance (PPG) ...



# Planning Practice Guidance

What is net gain?

*Net gain in planning describes an approach to development that leaves the natural environment in a measurably better state than it was beforehand. Net gain is an umbrella term for both biodiversity net gain and wider environmental net gain.*

Paragraph: 020 Reference ID: 8-020-20190721

Revision date: 21 07 2019

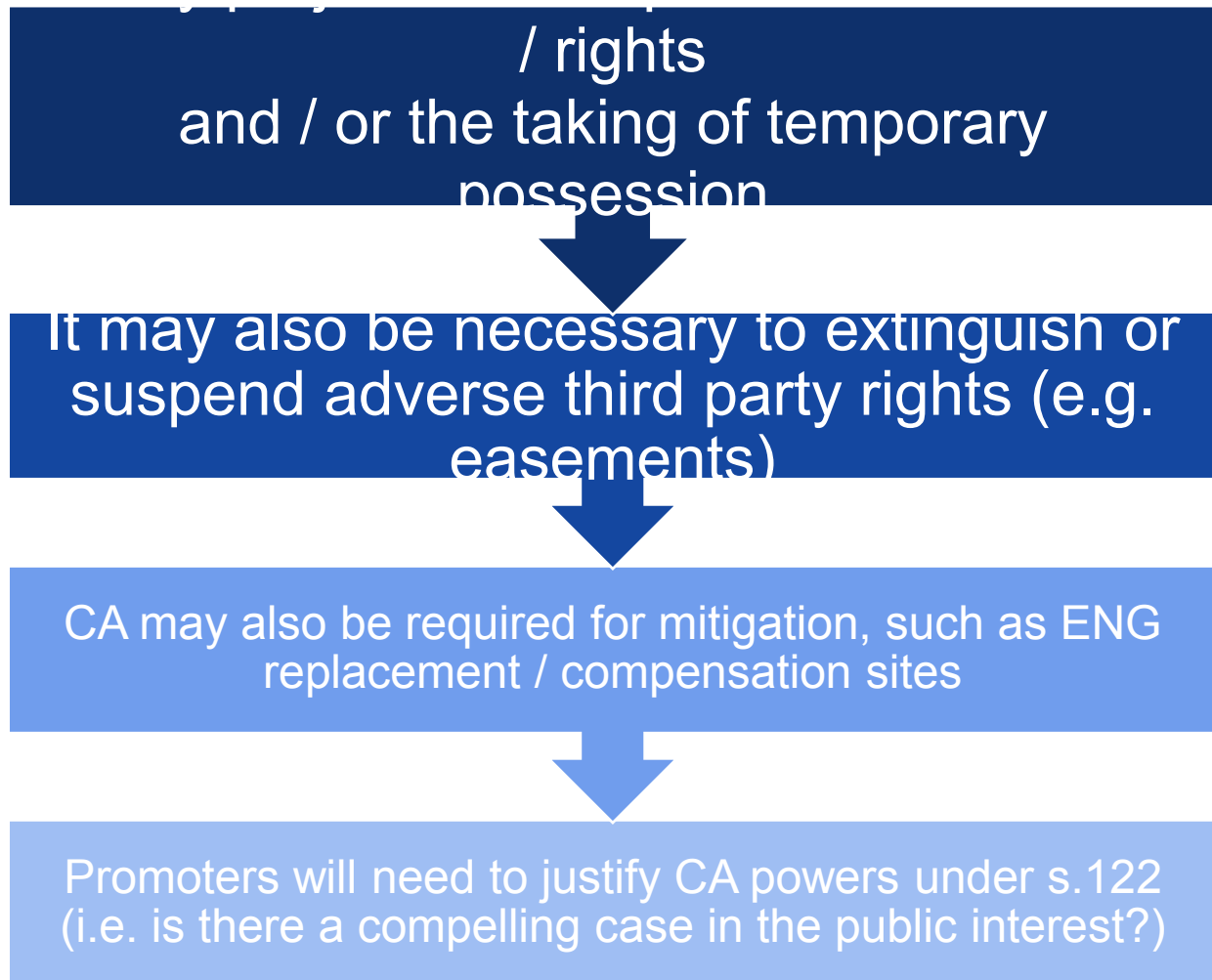
What is wider environmental net gain and how can it be achieved?

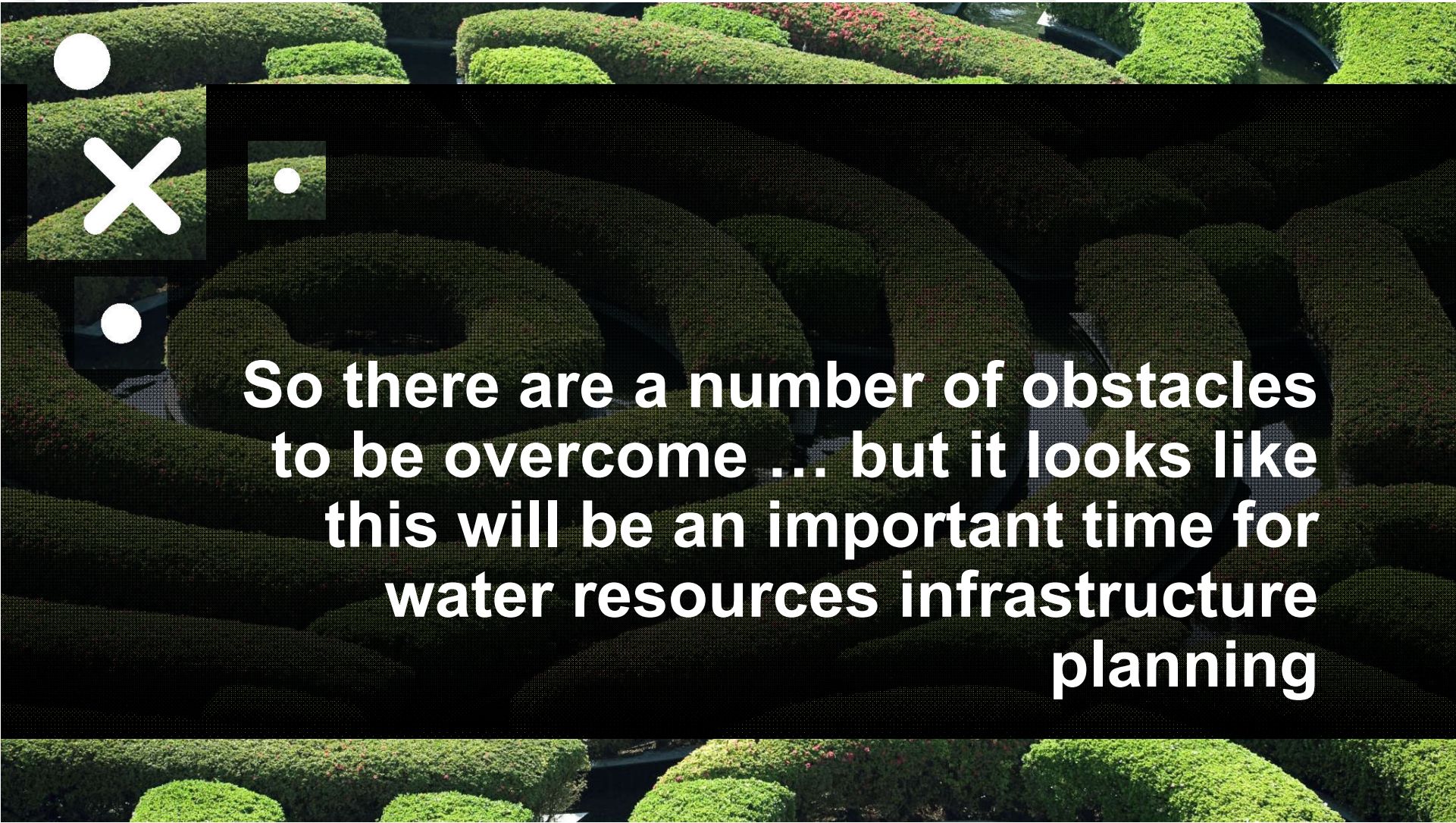
*The aim of wider environmental net gain is to reduce pressure on and achieve overall improvements in natural capital, ecosystem services and the benefits they deliver.*  
*For example, habitat improvements can provide a range of benefits such as improvements to soil, water and air quality, flood risk management and opportunities for recreation.*

Paragraph: 028 Reference ID: 8-028-20190721

Revision date: 21 07 2019

## Compulsory acquisition

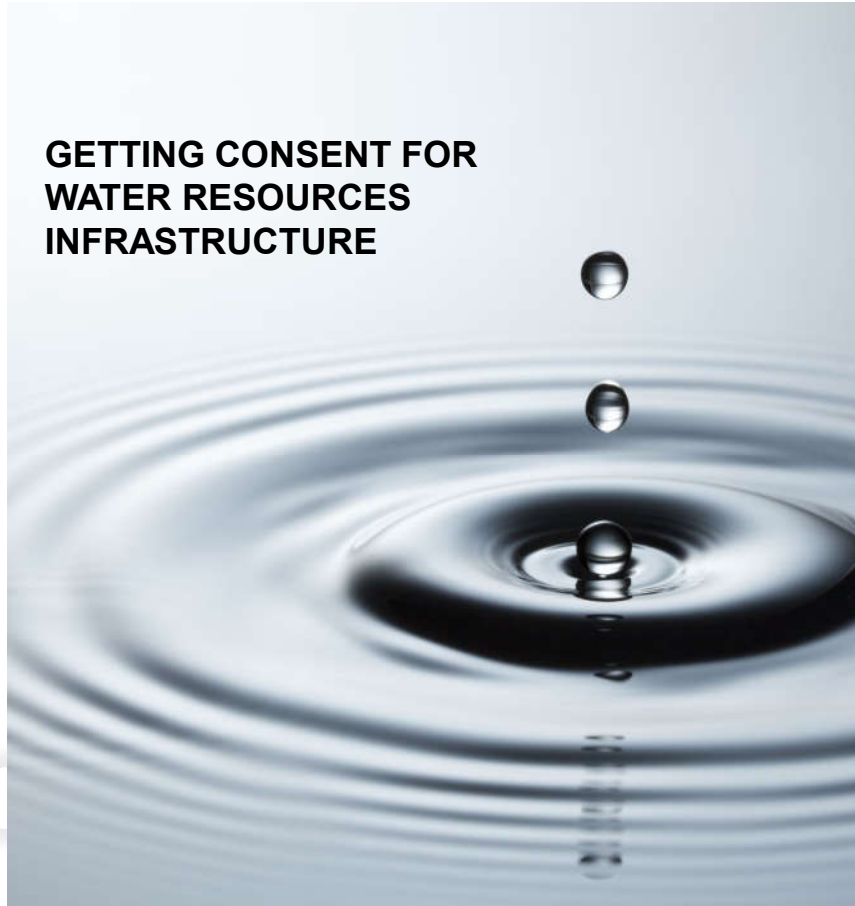




**So there are a number of obstacles  
to be overcome ... but it looks like  
this will be an important time for  
water resources infrastructure  
planning**



**GETTING CONSENT FOR  
WATER RESOURCES  
INFRASTRUCTURE**



*Thank you*

**Michael Humphries QC**

*Francis Taylor Building*

The background features a complex, abstract geometric design. It consists of numerous overlapping, semi-transparent shapes and lines in various colors including blue, orange, red, green, and purple. The lines often form parallel paths that create a sense of depth and movement, resembling architectural structures or data flow. The overall aesthetic is modern and dynamic.

# The Consenting Strategy Cocktail: Why every DCO applicant needs one and tips for success

Will Spencer, Infrastructure and Environmental Planning Associate, Barton Willmore







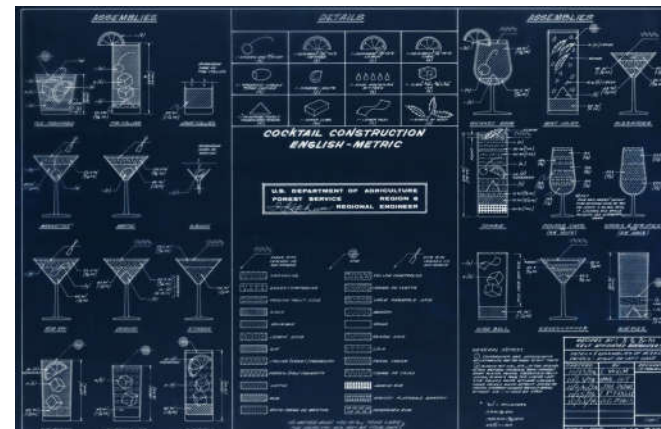
## Content

1. What is a consenting strategy?
2. Summary of consenting issues for DCO applications
3. Benefits of a consenting strategy (inc lessons learnt)
4. The consenting strategy cocktail – the top 5 ingredients needed



## What is a consenting strategy?

- **The means of managing the risks and issues that must be addressed to secure the necessary consent(s) and deliver the project in line with its objectives/programme.**
- **Addresses issues of uncertainty**
- **Supports investment decision making (re management of risk).**





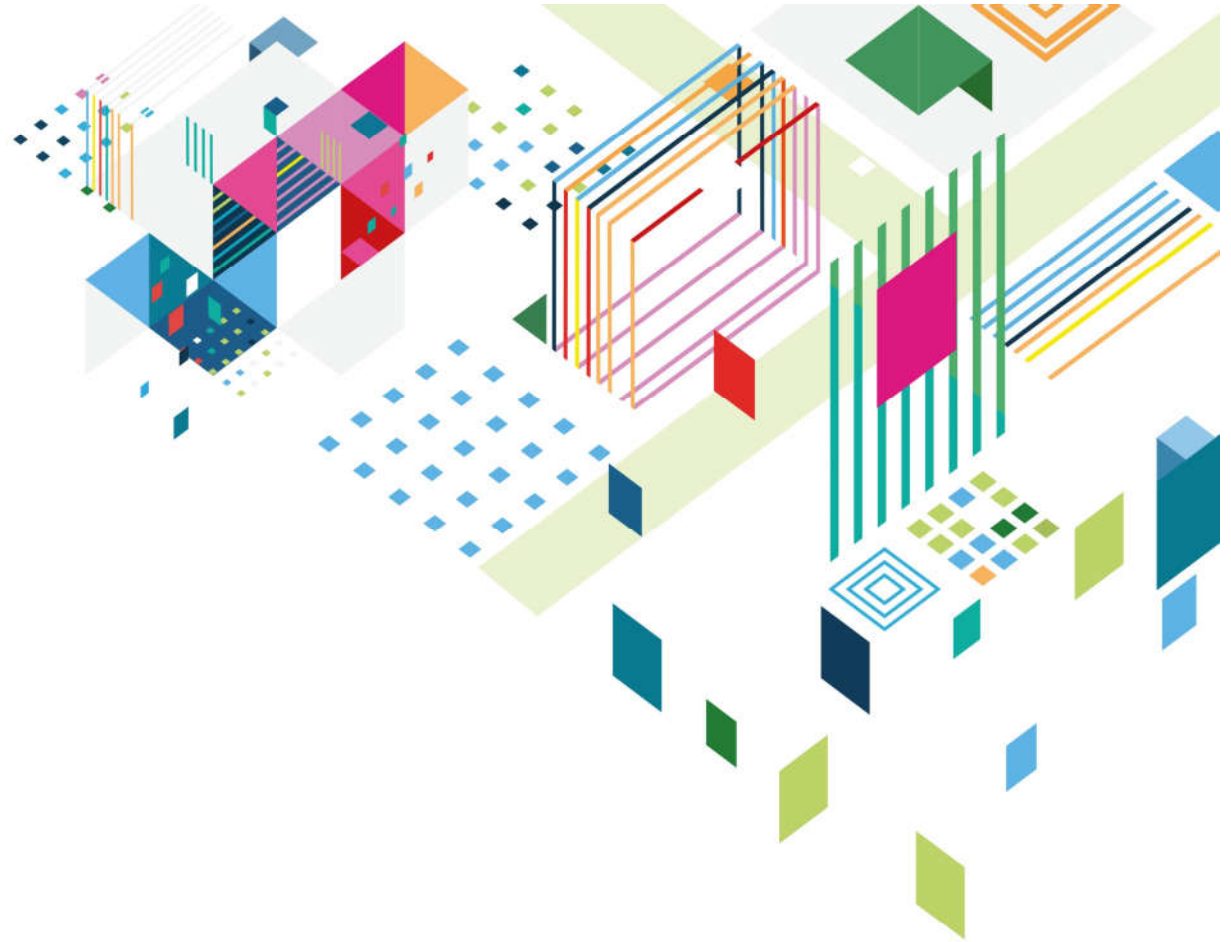
## Consenting issues for DCO applications

- **Defining the project and flexibility required**
- **Programme/commitments**
- **Statutory procedural requirements**
- **Planning policy requirements**
- **Environmental impacts and availability of evidence**
- **Access to land for surveys**
- **Views of stakeholders**
- **Need for compulsory acquisition**
- **Politics**
- **Uncertainty**
- **Project team (need for collaboration)**
- **Governance**



## Benefits of a consenting strategy

- **Risk identification and management**
- **Balance competing interests (e.g. flexibility vs env impacts)**
- **Minimise delays, control costs**
- **Focal point for different workstreams (shared interest)**
- **No shocks, no surprises at Examination**
- **Prepare for the scrutiny of the Examination**
- **Get deliverable consent (inc flexibility and land/powers required)**
- **Help meet specific commitments (e.g. start of works)**
- **Supports investment decision making**



# First Ingredient

*The project*



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EST. 1795

Jose  
Cuervo®

TRADICIONAL

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224 YEARS  
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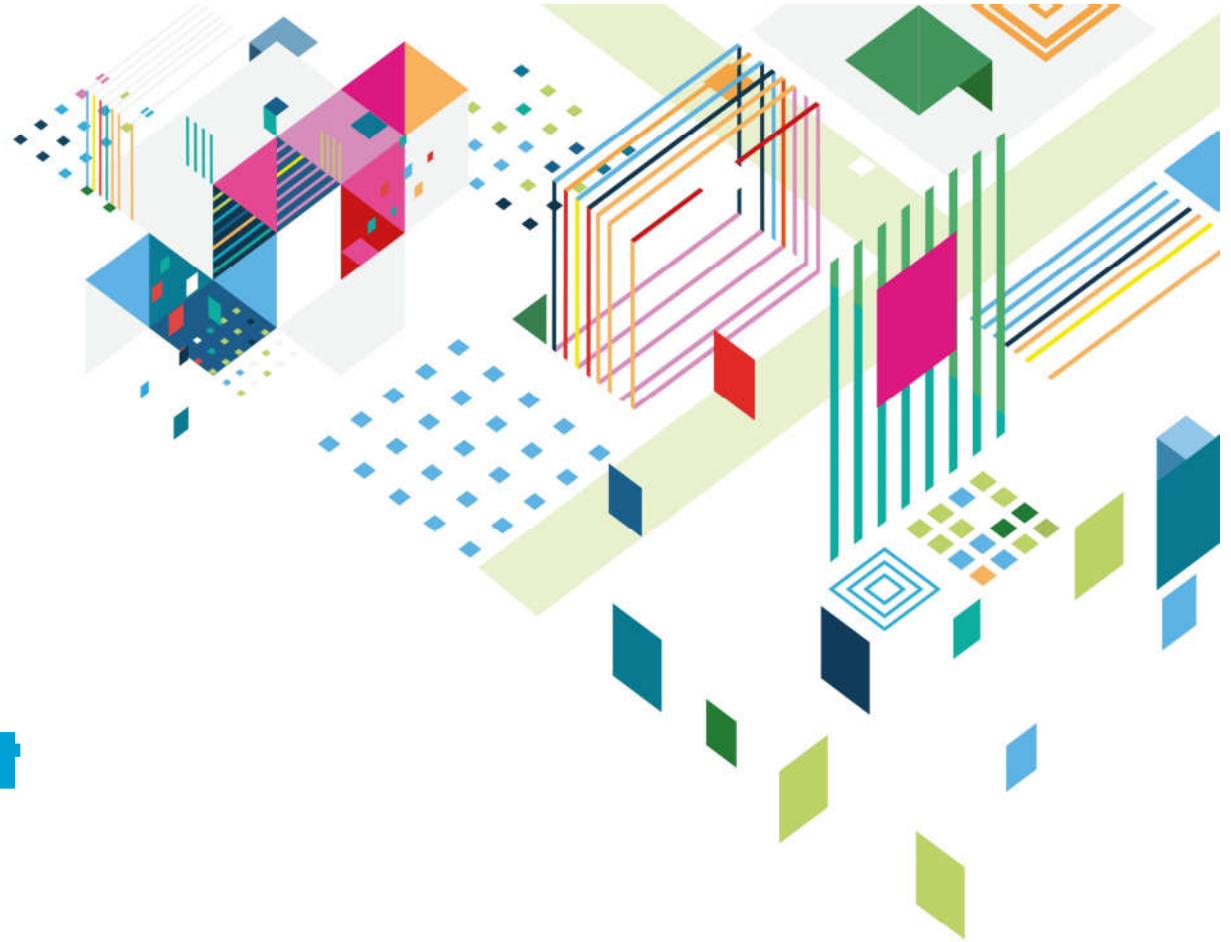
CUERVO





## The Project

- **Define the land and works requiring consent – construction, operation/management**
- **Project objectives**
- **Works to existing third party infrastructure (e.g. utilities)**
- **Need for compulsory acquisition (temporary/permanent)**
- **Buildability**
- **Uncertainties and implications for each stage of the project (e.g. EIA scoping, statutory consultation and the DCO application)**
- **Consent flexibility required**
- **Maximum design parameters for the EIA/HRA**



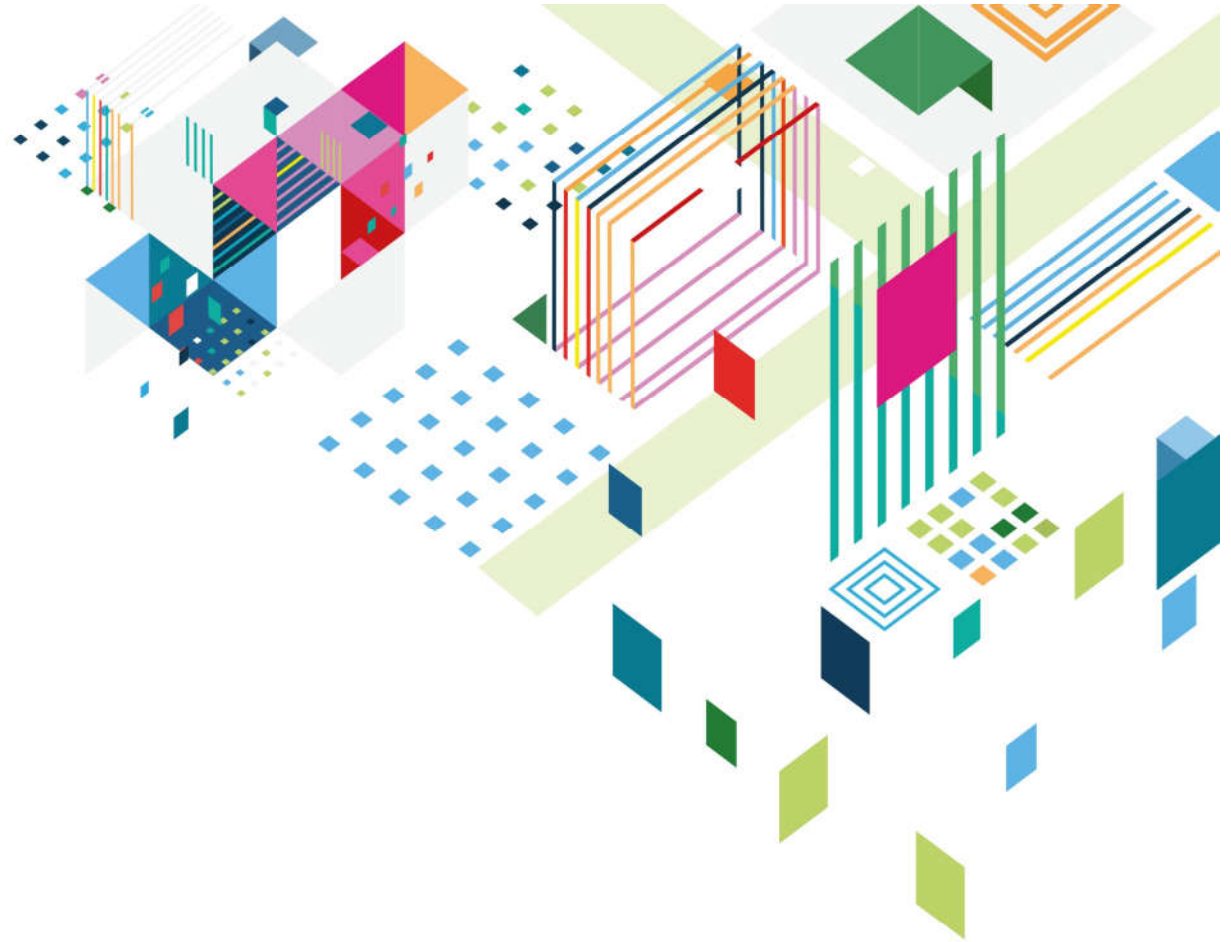
# **Second Ingredient** *The Programme*





## The Programme

- **Commitments**
- **Milestones**
- **Workstream inter-dependencies**
- **Collaborative planning**
- **Interface of DCO process with internal Governance**



# **Third Ingredient**

## *The Team*







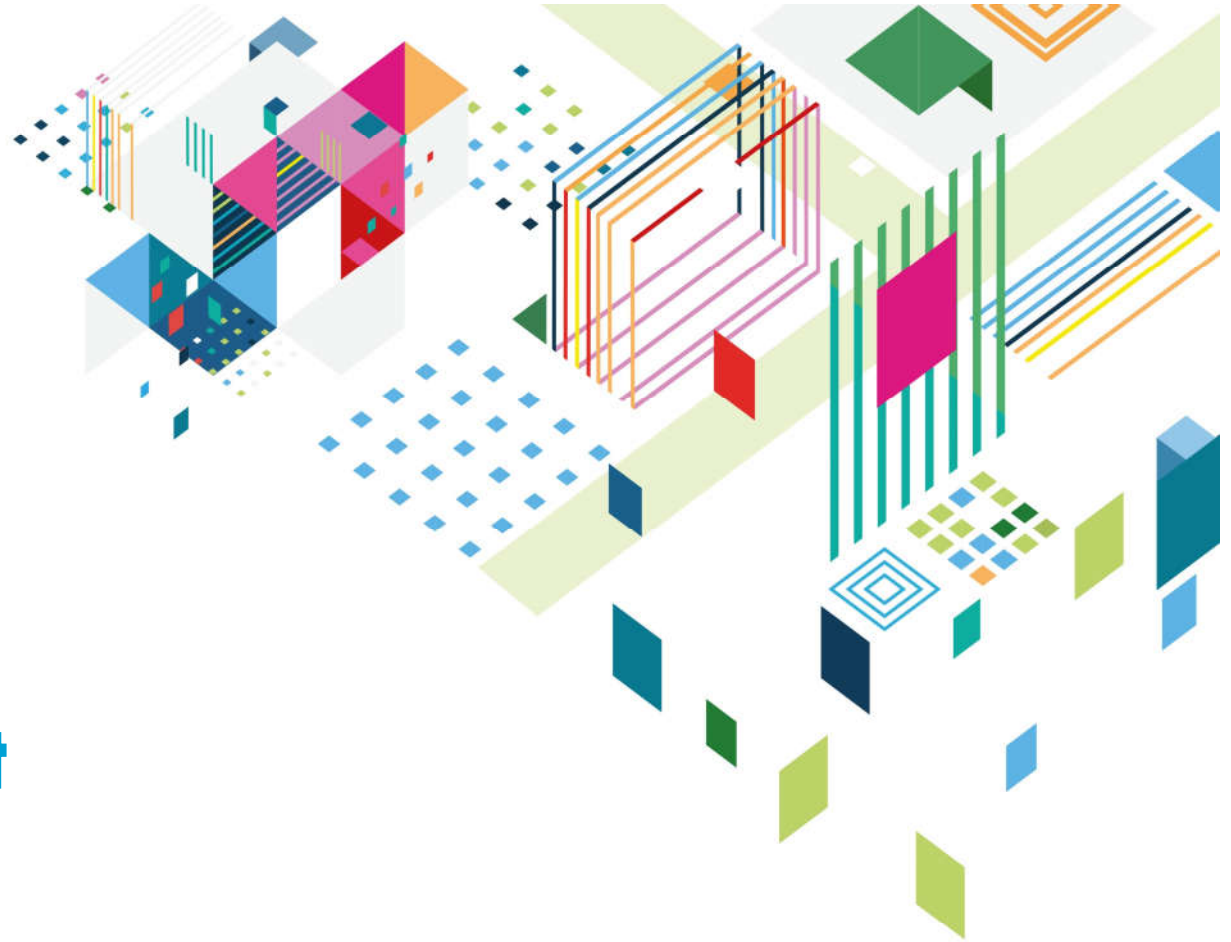


## The Team

- **Client project management**
- **Planning/DCO lead**
- **Design/engineering**
- **Legal**
- **Environment**
- **Land**
- **Stakeholder**
- **Communications/PR**



**Importance of team spirit (despite COVID difficulties)**



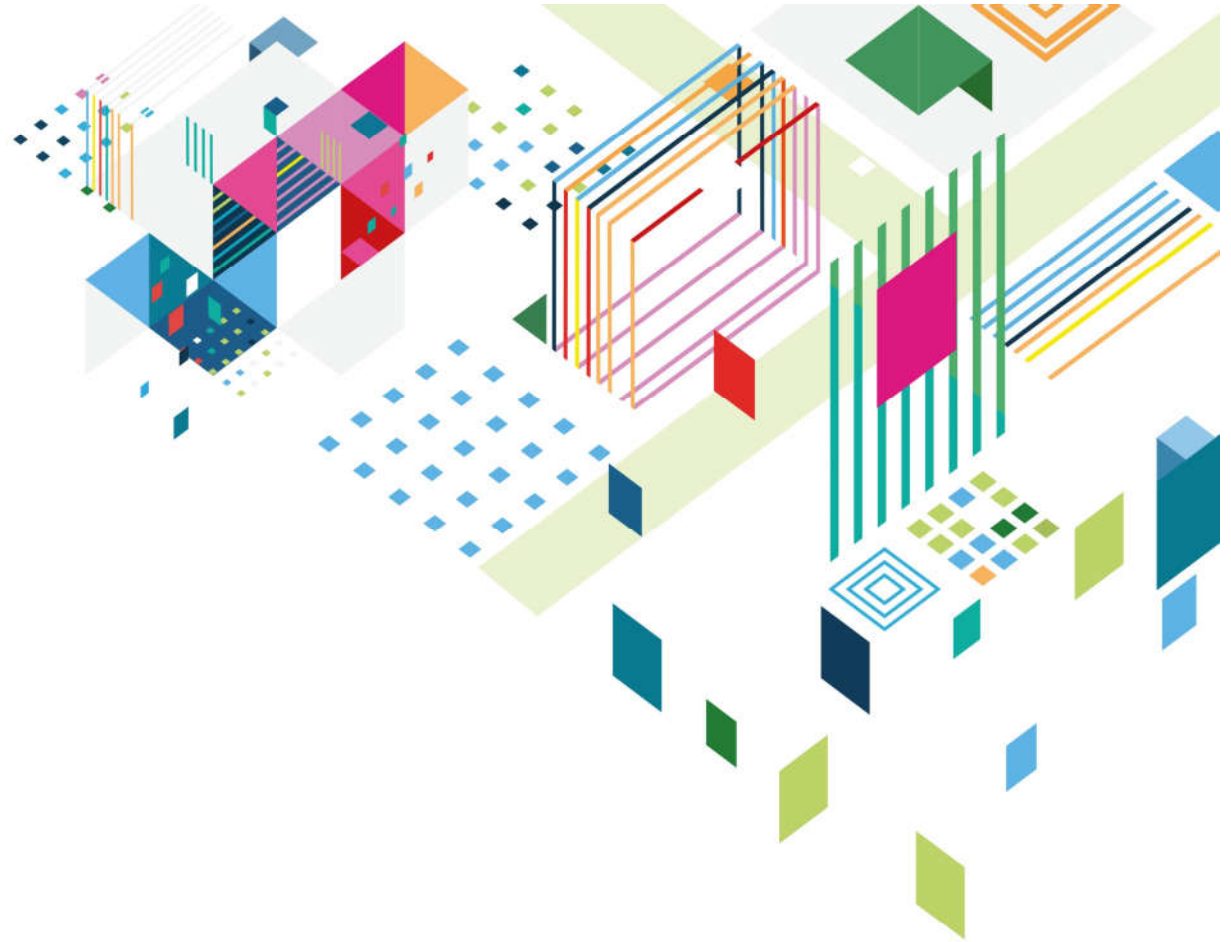
# **Fourth Ingredient** *The Risks*





## The Risks

- **Start early**
- **Planning policy compliance (existing and emerging/future)**
- **Legal compliance**
- **Likely environmental impacts**
- **Stakeholders (mapping and views/objections)**
- **Land access for surveys**
- **Land required (temporary/permanent)**
- **Land referencing/acquisition negotiations**
- **Identify key actions/owners**
- **Report/review regularly, from options development to application design**
- **Agree site/route/design selection criteria**



# **Fifth Ingredient** *The Journey*



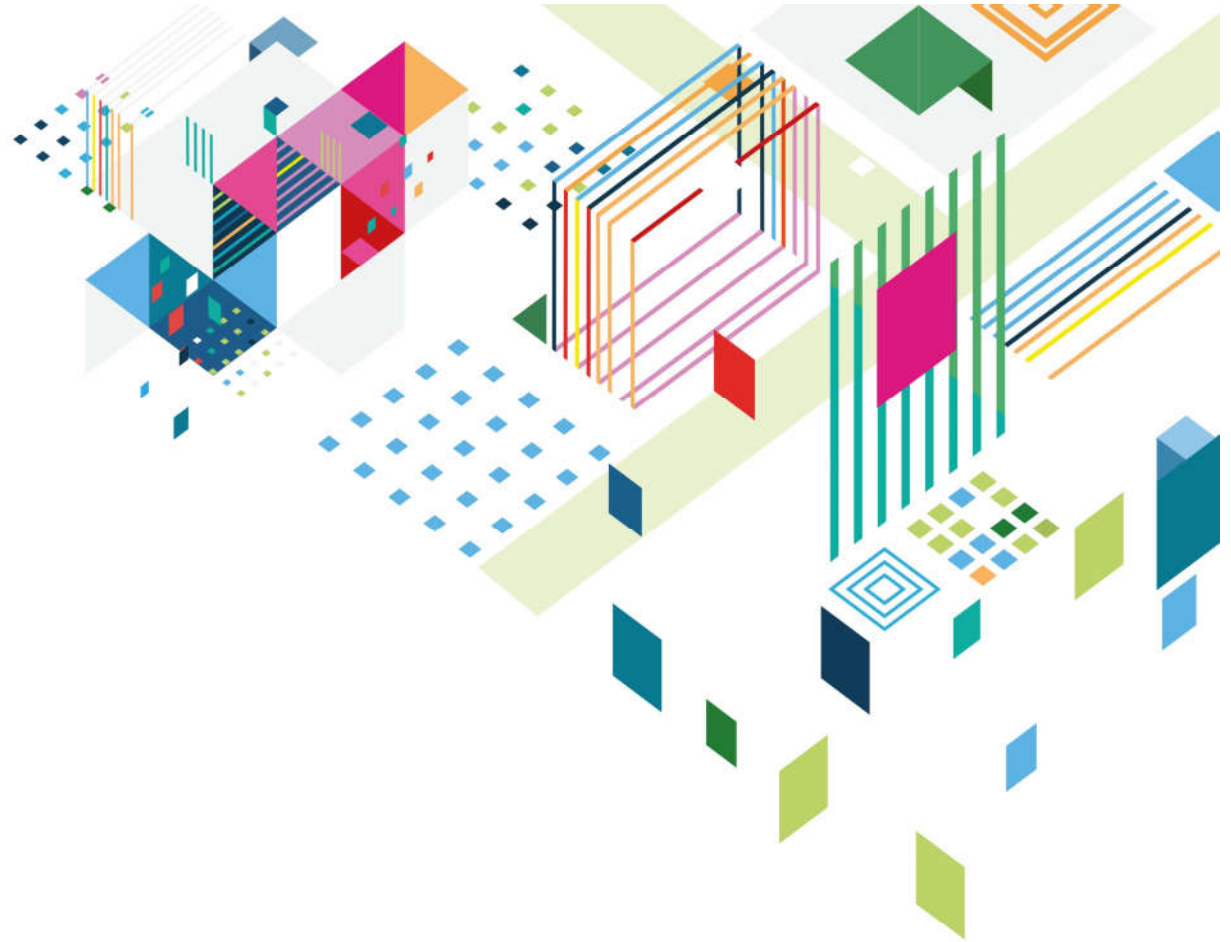






## The Journey

- **Prepare to adapt**
- **Take stakeholders with you**
- **Track issues**
- **Plan for the Examination (inc Statements of Common Ground)**
- **Consider post-consent (e.g. requirement discharge and delivery)**



# The Outcome?



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STATUTORY INSTRUMENTS

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2020 No. 1297

INFRASTRUCTURE PLANNING

The A303 (Amesbury to Berwick Down) Development Consent Order 2020

Made - - - - 12th November 2020  
Coming into force - - - 3rd December 2020

CONTENTS

PART 1  
PRELIMINARY

- 1. Citation and commencement
- 2. Interpretation
- 3. Disapplication of legislative provisions





Francis Taylor Building

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# Water Resources Management and Consenting

**22 January 2021**

