WATER NEUTRALITY STATEMENT

supporting

Mixed Use of premises for Classes B2, B8 and E(g)

at

Hurston Lane Depot, Hurston Lane, Storrington RH20 4AF

Background

1. This Statement has been prepared in the light of the Position Statements of Natural England (NE) and the Local Planning Authority (LPA) including the Advisory Notes of EN issued in February 2022 that explain their respective positions in this matter.

2. The methodology adopted to show water neutrality for this scheme reflects that set out in the LPA's website entitled 'Water neutrality and planning applications', which has been adapted to take account of the particular circumstances pertaining to this particular development and site.

3. The LPA advises it is currently trying to resolve the way ahead on this matter with NE, Southern Water (SW) and the Environment Agency (EA) etc. Its current Position Statement on water neutrality that it is currently using to guide determination of affected applications may well change as a result of 'consortium' deliberations etc. It has not been through any apparent consultation exercise or examined in public etc to form part of the development plan. In these circumstances, in itself, it is therefore a material consideration that must carry limited weight in the determination of this application. Of particular note is that in resisting development that does not increase the rate of water abstraction for drinking water above existing levels, it goes beyond what is required by the 2017 Regulations.

4. In this latter respect, the correct 'tests' to be applied to the application are those that stem from the legal obligations arising from s63(1) & (5) of The Conservation of Habitats and Species Regulations 2017, rather than the LPA's position on water neutrality.

5. Sections 63(1) & (5) require that a competent authority **must** make an Appropriate Assessment of a project that is likely to have a **significant effect** on a site's conservation objectives and may agree that project **only** after ascertaining it will not affect adversely the integrity of the site. S64 allows for a negative assessment to be overridden if the project must be carried out for imperative reasons of overriding public interest.

6. The natural consequence of the LPA's position on water neutrality, which is detailed below along with the other definitions adopted by the various stake holders in this matter, is effectively to promote a threshold of no effect whatsoever from the development itself rather than assessing whether a project is likely to have a significant adverse effect etc as required by the 2017 Regulations. Furthermore, in seeking absolute water neutrality, the approach does not take account of other initiatives being promoted by, for example, the EA on storage capacity of water reserves and supporting water supply from other areas and SW through its water resilience plans such as the continuing installation of water meters for existing housing stock, the roll out since February 2022 of clip on technology for non-household water consumers and maintaining the network to reduce leakage etc, all of which are securing proven reduced water consumption that will have a beneficial impact on the site's conservation objectives, even if no further housing or employment development were provided in the District from this day forward. Whereas the existing lawful commercial use of these premises could continue unabated and unaffected by water neutrality matters, the current application will bring the matter under control. This represents a further tactic, alongside the EA etc, aimed at reducing water consumption so ought, in principle to be supported. It is entirely reasonable therefore that any approach should have regard to the balancing act of other initiatives and the fallback case relating to the existing lawful use of the premises et el that will have a beneficial effect on conservation issues at hand.

7. This water neutrality statement demonstrates this development will neither have a significant adverse effect on the conservation area's integrity and that it will not increase the use of mains water and can be screened out as part of an Appropriate Assessment.

Definitions of Water Neutrality

8. It is worth noting, there are various definitions of water neutrality by the various stake holders, which are set out below.

LPA - Water neutrality is defined as development that takes place, which does not increase the rate of water abstraction for drinking water supplies above existing levels. (Horsham District Council web site under Water Neutrality)

Environment Agency - The refined definition of water neutrality is: "for every new development, the predicted increase in total water demand in the region due to the development should be offset by reducing demand in the existing community". This definition should be used to ensure a consistent understanding of the purpose of water neutrality. *('Using science to create a better place' – Resource Efficiency Science Programme Science Report SC080033/SR2)*

Natural England - For every new development, total water use in the Sussex North Water Supply Zone after the development must be equal to or less than the total water-use in the region before the new development." *(NE notes Water Neutrality is not currently defined in legislation, but it draws its definition contained in its Advice Note of February 2022 from the Gatwick Sub regional Water Cycle Study (2020).*

Gatwick Sub regional Water Cycle Study (2020) – 4.9.1 states it is important that new development does not cause an unsustainable increase in water abstraction. This can be done in a number of ways from reducing the water demand from new houses

through to achieving "water neutrality" in a region by offsetting a new development's water demand by improving efficiency in existing buildings.

Neither NE's nor the LPA's definitions of water neutrality can be found in the Gatwick Study but paragraph 4.9.8 states water neutrality can be achieved in a host of ways including by (i) reducing leakage from water supply networks, (ii) making new developments more water efficient, (iii) "offsetting" new demand by retrofitting homes with water efficient devices, (iv) encouraging existing commercial premises to use less water, (v) implementing metering and tariffs to encourage wise use of water along with (vi) education and awareness-raising amongst individuals.

9. Although the specific text cannot be found, The Conservation of Habitats and Species Regulations 2017 and The Habitats Directive appear to present the legal basis for NE's water neutrality objective set out in its February 2022 Advice Note, which states:

> "In order to avoid an adverse effect on integrity, the conservation status of a habitat must, if favourable, be preserved. If unfavourable, it must not be further harmed or rendered more difficult to restore to a favourable status. It is this which Water Neutrality is seeking to achieve."

10. NE's February 2022 Advice Note states it is currently undertaking a full integrated condition assessment of the SSSI sites that make up the Habitats Sites. The present indication (on the basis of water levels) is that the sites' condition is Unfavourable. It appears monitoring is ongoing in relation to water quality. NE awaits the findings of this monitoring before drawing any definitive conclusions regarding the Habitats Sites. However, at this stage existing abstraction cannot be ruled out as contributing to or causing an ongoing adverse impact on the sites.

11. The Advice Note goes onto state in terms of achieving water neutrality it considers the amount of water from new developments using public water supply in the Sussex

North Water Supply Zone will be calculated on an individual or cumulative basis to produce a predicted "demand" for water from growth. Once this per-capita calculation has been made, each new qualifying development will need to demonstrate how that development will achieve no net increase in water consumption. This can be done through a combination of water efficiency measures and offsetting. (It appears this approach takes no account of water abstraction reduction initiatives being pursued elsewhere)

12. At the time of preparing this statement, it therefore appears there is no certainty about NE's current position about the impact of water abstraction on protected habitat etc and that there are differing views about how, overall, water neutrality will be resolved. Any strategic solution that might emerge is awaited but there can be no certainty at this stage there will be such a strategy.

13. The LPA appears to place the burden entirely on new house and commercial building by not allowing such development unless it can be shown not to increase water extraction.

14. NE adopts a similar approach to the LPA but neither appears to take account of water extraction savings being made by other means and when there is a host of different ways of addressing the matter as outlined above.

15. It is clear the route to reduced water extraction is not simply through new housing or commercial projects. Other initiatives will be required in accordance with the EA's view that it will only likely be achieved by concerted action in partnership with the local community, local authorities, local water companies, the Environment Agency and developers. This current application will allow a site unfettered by water restrictions under control so must, on the balance of probabilities, respect water neutrality objectives that seek amongst other things to bring commercial sites such as this under control. In this way, it is unlikely this site will undo any benefits arising from other development that is shown to be water neutral.

<u>Water Neutrality issues arising from the appeal relating to DC/21/1279 that was dismissed 13 June 2023.</u> ***(The appeal decision date is important relative to the recorded water meter readings from 01/03/2022 to 12/07/2023 that showed the use of 410,000 litres during that period.)***

16. Regarding water neutrality, at paragraph 25, the Inspector noted the Council's related objection but avoided making an associated Appropriate Assessment by not considering the matter in view of the decision to dismiss the appeal on other grounds. The Inspector therefore remained neutral on the matter.

17. At paragraph 9.28, the Council's appeal statement maintains that because the building has been unoccupied the existing water consumption is considered to be nil. This stance is reinforced with reference to guidance provided by Natural England that states that calculation of any baseline water consumption should reflect the existing 'current' use, not the last known use. Accordingly, the Appellant's water neutrality case submitted with the appeal is rejected and it is maintained **<u>any</u>** grant of permission would be contrary to policy. In the Council's view, it therefore appears issues regarding water neutrality are, in this instance, insuperable and that this application is a wasted effort.

18. Paragraph 9.28 goes on to maintain that the proposed uses (B2, B8 and E(g)) would likely result in multiple companies with employees and processes that would impact on water consumption. "The uses would therefore create additional employment on the site creating additional water consumption in comparison to the existing water usage of the vacant building and yard."

19. It is considered the above comments cannot be substantiated on several counts. Firstly, the letter to the Council of 16 September 2021 sets out details surrounding the varying parking requirements for B2, B8 and E(g) use. Essentially, WSCC's parking requirements for development spring from TRICS data, a nationally recognised data base of average parking requirements from monitoring of urban and rural commercial uses. (A study by the Countryside Commission showed reduced traffic generation by

users of rural buildings compared to the urban counterpart.) The western yard is proposed to be limited to B8 use whilst the building is intended to incorporate all three uses and could well be used for B8 use, such as storage of vintage cars, similar to the use of the western yard for long term storage of bricks, neither of which generate high employee numbers to observe the bricks and cars being stored. There is no evidence to show the proposed uses will therefore, as claimed, result in an increase in employment at the site. Indeed, it is highly likely the opposite will occur because the employment requirements of the Council to meet its publically funded obligations to provide a public waste service to the residents and businesses of the District is always likely to be higher that those of say three small businesses seeking to maximise output with the least amount of staff in order to maintain profitability.

20. Secondly, there is no legal authority to substantiate the Council's claim at paragraph 9.28 of its appeal statement that because a building has been unoccupied the existing water consumption should be taken as nil. There appears to be no such requirement in the associated Regulations that dictates this approach when making an Appropriate Assessment, particularly when an existing use has not been abandoned. Indeed, the approach could be considered perverse and entirely without merit in the light of the willingness to rely on projected average water consumption for proposed development to make an Appropriate Assessment. It appears there is no justifiable case for ignoring the water consumption of an existing lawful use, even if the premises are vacant, as they will almost certainly be on change in occupier, which is a regular occurrence with many commercial buildings, particularly during these times of economic stress. The Council's approach will discourage employment opportunity to boot.

21. Thirdly, the Council maintains its nil approach to water consumption is reinforced by Natural England, which states that calculation of any baseline water consumption should reflect the existing 'current' use, not the last known use. It appears that NE is unable to rely on any legal authority to maintain that position in the context of the legal requirements for an Appropriate Assessment. It has, in effect, invented this requirement on the hoof outside the requirements of associated legislation etc.

22. Fourthly, even if NE's above approach is accepted as sound, then it should support this water neutrality case, as should the Council. In this respect, by the time of the appeal decision on 13 June 2023 there had been ongoing water consumption at these premises for over a year. The meter shows during the period 01/03/2022 to 12/07/2023 410,000 litres had been consumed. This equates to an annual consumption rate of about 290,000 litres. That water consumption arose as a result of part occupation of the premises and it is assumed therefore that both the Council and NE will accept those details that could only have arisen from occupancy rather than being vacant and not seek to alter their stance from that set out at appeal.

23 The meter readings from meter 6M221838 at these premises date back to 2006, it is assumed soon after a meter was installed. They have been provided by a Retail Operations Specialist of ADSM, which seeks to reduce water consumption by UK Organisations. Every unit on a metre reading equates to 1 cubic metre of water consumed that is equivalent to 1000 litres.

24. The meter readings rose from 7147 to 7218 between 05/03/2021 and 03/12/2021 and then remained at that level until 01/03/2022 whilst the building appears to have been vacant. They then rose to 7628 by 12/07/2023 as a consequence of the applicant taking up ownership etc. Whilst this is no doubt a blip as a result of the various building works and tidying up etc carried out on first occupation, it is the contextual basis on which the Council and NE require the Appropriate Assessment to be made. Water consumption at these premises is not therefore nil as claimed by the Council and should be based on NE's approach that requires water consumption to reflect the 'current' use.

25. The records show that between 12/01/2015 and 15/01/2016 154,000 litres were consumed, between 15/01/2016 and 01/04/2017, 179,000 litres, between 01/04/2017 and 30/04/2018, 475,000 litres, between 30/04/2018 and 26/03/2019, 74,000 litres, and between 26/03/2019 and 03/12/2021, 136,000 litres (meter reading of 7218) where it remained static at 7218 until 01/03/2022 and showed that by 12/07/2023 under new occupation the meter reading had risen by 410,000 litres.

26. The above figures demonstrate that between January 2015 and January 2021 an average of 170,000 litres of water were consumed a year before flat-lining when the premises were empty but quickly rising by 410,000 litres in the last 16 months ending 12 July 2023.

27. The existing premises is provided with hot and cold running water, a kitchen sink, 3 WC's, 4 large wash basins, 3 full height unrestricted flushing urinals and a shower, all of which are old and lack any apparent facilities to reduce water consumption. These will all be stripped out and, in turn, each of the three new units to be created in the building will be provided with a single WC and sink in accordance with the Building Regulations. These can be conditioned to comply with the relevant parts of Table 2.2 in Approved Document G of The Building Regulations 2010, which seeks to minimise water consumption of appliances, notwithstanding these requirements apply to dwellings. Table 2.2 controls the maximum consumption level of a dual flush WC to 4/2.6 litres and sink taps to 6 litres per minute. There can be no doubt that 3 modern WC's and sinks that restrict consumption of water of those appliances to below the Table 2.2 maximum levels must use less water than the 12 uncontrolled and unrestricted appliances currently in the premises.

28. Based on the latest 'current' meter reading for the year ending July 2023, the current annual consumption of mains water amounts to 290,000 litres and it is this figure both the Council and NE require to be used to make the Appropriate Assessment. However, the historic meter readings from when the Council occupied the premises show a normal average annual consumption of 170,000 litres, some 120,000 litres below the 'current' water use. It is accepted current water use stems from preparatory internal works not requiring planning permission to prepare the building for rent etc with similar activity accounting for the unusually high rate of water consumption between 01/04/2017 and 30/04/2018 of 475,000 litres.

29. Based on the average water consumption over several years when in use by the Council, having regard to the proposed mixed use that will, as demonstrated and on

the balance of probabilities, reduce the number of employees at this site and when the 12 existing appliances that use water, which includes a shower and 3 unregulated urinals that flush even if not used, will be replaced by a reduced number of modern counterparts, 6 in number, designed specifically to limit the use of water, it appears there is a compelling case the proposed use of the premises will result in less annual water consumption than the average used by the Council in past years (170,000 litres) and certainly significantly less than the 'current' annual water consumption of 290,000 litres, against which the Council and NE require an Appropriate Assessment to be made.

30. For the purposes of planning control over water use, planning conditions that seek to limit actual water consumption for each householder are unlikely to pass the 6 tests that each condition must pass and are essentially unenforceable.

31. The condition itself, as well as the details it requires, must pass all the 6 tests which are that they must be:

1. Necessary
2. Relevant to planning
3. Relevant to the development to be permitted
4. Enforceable
5. Precise and reasonable in all other respects.

32. The attached appeal decision (APP/D3125/W/22/3301266) relates to a condition requiring the means to limit water consumption per person but was dismissed despite claims the condition failed the 6 tests. In dismissing the appeal, the Inspector states: *"The condition does not place a restriction on actual levels of water use. It simply ensures that future occupiers are provided with the means to reduce their water usage to a maximum of 110 litres per person a day."* This approach is clearly inadequate in this area at the current time where water conservation issues are at play that require an Appropriate Assessment because the condition effectively pays lip service to the matter by merely offering the opportunity for occupiers to reduce water consumption rather than presenting an enforceable restraint that limits water use.

33. However, it is considered that a condition requiring the appliances that will serve the proposed mixed use of the premises to comply with the requirements of Table 2.2 in Approved Document G of The Building Regulations 2010 will be compliant with all 6 tests in order to reinforce, along with all the other proposed conditions that control related matters, the Appropriate Assessment and ensure this development is water neutral with the degree of certainty the matter requires.

34. A pre-commencement condition requiring precise details of the number of appliances to be installed and for them to be shown to be compliant with the requirements of Table 2.2 and installed before the proposed uses are implemented is hereby agreed. These controls would be exercised through the planning permission and would be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects.

35. This application allows, for the first time in the property's history, the opportunity to gain control over matters that will reduce the use of mains water at these premises. This will work in favour of the conservation objectives and ensure this development will not have a significant effect on conservation objectives under Sections 63(1) & (5) of The Conservation of Habitats and Species Regulations 2017.

36. It is considered this development should therefore, following an Appropriate Assessment, be screened out.

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