

Further to the Applicant's submission at deadline 7 setting out its position on protective provisions, Affinity Water Limited (Affinity) state the following:

- That Affinity do not agree with the position or amendments put forward by Five Estuaries and note in particular the following in response to Five Estuaries submission:

- o The undertaker's Deadline 7 submission provides the most substantive explanation of the undertaker's position provided to date. For example, with regards to paragraphs 2.10-2.14 of the Deadline 7 submission, Affinity has been seeking an explanation as to why paragraph 5 (Access) has been included specifically and what it was covering since the commencement of negotiations..

This approach makes is highly difficult for Affinity to respond substantively both directly to the undertaker and to counter the assertions made in the Deadline 7 submission as Affinity is not clear where the undertaker stands on certain points and why they are seeking to make certain amendments. Another example is the indemnity cap referred to a paragraphs 2.68-69 of the Deadline 7 submission which was only proposed to Affinity in the version of the PPs received on 26 February 2025 with no explanation as to how this figure had been reached

- o The submission demonstrates fundamental misunderstandings of the purpose and meaning of aspects of the protective provisions, despite Affinity's efforts to clarify. For example, paragraph 7 (Removal of apparatus) in Affinity's Bespoke Protective Provisions includes wording to refer to the adoption of alternative apparatus. Where apparatus is constructed by Affinity, it is automatically adopted by virtue of Affinity being a water undertaker. Where a third party constructs apparatus, an adoption process needs to be undergone in order for that apparatus to become part of Affinity's network. This drafting has been ignored and removed by the undertaker without sufficient justification as to why.

- o The undertaker points to 'precedented' examples as to why certain amendments should be accepted. These precedent examples are protective provisions for other undertakers, not Affinity Water therefore they are not 'precedented' for Affinity. In addition, it is likely that certain amendments were agreed by other statutory undertakers on the basis of private agreements which allowed the statutory undertaker to get comfortable. Affinity therefore cannot agree to inclusion of amendments on the basis that they have been agreed elsewhere when what has been agreed is subject to other undisclosed protections.

Of particular concern is the undertaker's refusal to provide an indemnity on the basis that reasonable compensation is precedent. Not only are there are many examples of indemnities being provided in protective provisions, anywhere where an indemnity is not provided is likely to have been the subject of an external agreement.

- The justifications as to the need for Affinity's Bespoke Protective Provisions were set out in detail in its Deadline 7 submission and until the point that the parties reach an agreed position Affinity must seek this version of the protective provisions in the Order so as to provide sufficient protection for its undertaking.

- Affinity will continue to engage to try to reach an agreed position by 17 March but note that the engagement from the undertaker to date has been sporadic, delayed and without sufficient clarity as to enable considered responses from Affinity.