

LONDON LUTON AIRPORT EXPANSION PROJECT

SUMMARY OF WRITTEN REPRESENTATION OF AFFINITY WATER LIMITED (URN 20040591)

1. Affinity Water's status and statutory responsibilities

- 1.1. We are instructed by Affinity Water Limited (**Affinity Water**) in relation to the application for a development consent order (**DCO**) made by London Luton Airport Limited (**the Applicant**) to authorise the expansion of London Luton Airport (**the Project**). This summary written representation is made on behalf of Affinity Water ahead of Deadline 1 of the Examination on 22 August 2023.
- 1.2. As detailed in its Relevant Representation, Affinity Water is the largest water-only supplier in the UK and the appointed water undertaker under the Water Industry Act 1991 for certain areas in the south-east of England comprising Bedfordshire, Berkshire, Buckinghamshire, Essex, Hertfordshire, Surrey, the London Boroughs of Harrow and Hillingdon and parts of the London Boroughs of Barnet, Brent, Ealing and Enfield. Affinity Water also supplies water to the Tendring peninsula in Essex and the Folkestone and Dover areas of Kent.
- 1.3. As a result, Affinity Water is subject to a number of strict statutory duties for the supply of c. 950 million litres of water each day to a population of more than 3.83 million people.
- 1.4. Affinity Water is the appointed water undertaker for the entirety of the Order limits as defined in article 2(1) of the draft DCO [AS-067] (and the surrounding areas). Affinity Water is therefore a statutory undertaker for the purposes of sections 127 and 138 of the Planning Act 2008
- 1.5. Given its statutory duties, any development in areas where Affinity Water is responsible for providing water services, or over or near land in which Affinity Water maintains assets and/or has other rights for the purposes of discharging its statutory duties (e.g. in respect of abstraction), is carefully considered by Affinity Water and the Project is no different.

2. Objection

- 2.1. At this present time, Affinity Water maintains its objection (as first set out in its Relevant Representation) to the Project. Whilst Affinity Water does not object *in principle* to the Project, its statutory duties compel it to object to the Project on the basis that, absent of satisfactory protections for its benefit, the Project would cause serious detriment to Affinity Water's undertaking. Affinity Water has the following overarching principal issues with the DCO application at present – these are more fully explored in Affinity Water's full Written Representation:
 - 2.1.1. the proposed operation of powers contained in the draft DCO authorising the Applicant to construct, operate and maintain works on, across, under, above or adjacent to Affinity Water's operational assets which may impede Affinity Water's ability to ensure the safe, efficient and economical provision of water services and for Affinity Water to discharge its statutory duties;
 - 2.1.2. the proposed operation of powers contained in the draft DCO authorising the Applicant to compulsorily acquire land, to compulsorily acquire rights in or over land, extinguish rights in land or take temporary possession of land in which Affinity Water maintains assets and/or has other rights for the purposes of discharging its statutory duties;
 - 2.1.3. the fact that the intention of the Applicant appears to be for Affinity Water to have no formal input into mitigation measures that are directly relevant to its

functions (for example in the Code of Construction Practice proposed to be secured by paragraph 8 of Part 2 of Schedule 2 to the draft DCO), and, indeed that the scope of water-related control measures during the operation of the Project appears to be limited;

- 2.1.4. the absence in the current draft DCO of satisfactory protective provisions for the benefit of Affinity Water;
- 2.1.5. the lack of clarity at this stage in respect of the measures to be implemented to mitigate foundation works risk to water sources;
- 2.1.6. the lack of clarity at this stage in respect of the measures to be implemented to mitigate risks associated with the discharge of water treated onsite, which may impact water sources; and
- 2.1.7. the lack of clarity around demand for water from the Project, both during construction and operation, given pressures in the local area.

3. Engagement between Affinity Water and the Applicant

- 3.1. As a preliminary point, it is worth noting that the Applicant has sought to engage positively with Affinity Water to date, particularly on certain technical matters, which is welcomed. Whilst discussions have not yet started on the form of a legal agreement that would be the vehicle for addressing many of Affinity Water's concerns, it is understood that the Applicant is willing to actively engage on this with a view to reaching agreement during the DCO examination. Affinity Water would actively encourage this and will work with the Applicant to achieve this as far as reasonably practicable.

4. Protective Provisions

- 4.1. Affinity Water notes the 'standard' set of protective provisions for the benefit of statutory undertakers contained in Part 1 of Schedule 8 to the draft Order. As has been communicated to the Applicant, these are unsatisfactory to Affinity Water in a number of areas. Affinity Water wishes to engage with the Applicant with a view to reaching agreement on a satisfactory form of protective provisions for the benefit of Affinity Water, to deal with the impacts on its interests so as to avoid serious detriment to its undertaking arising from the Project. It is considered likely that all the issues raised above could be resolved through such means.

5. Current Position

- 5.1. If the Applicant and Affinity Water can reach agreement on suitable legally robust protections to address the concerns detailed above, Affinity Water considers that its objection could be resolved swiftly. However, Affinity Water is compelled to maintain its objection to the Project at this stage absent such agreement with the Applicant.
- 5.2. Affinity Water will seek to continue to positively engage with the Applicant on these points.

Pinsent Masons LLP

22 August 2023