

LONDON LUTON AIRPORT EXPANSION PROJECT

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 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:

- 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. Further Detail on the impact of the Project on Affinity Water

- 4.1. Below is a summary of the key issues that Affinity Water has identified that need to be resolved.

Water Supply

- 4.2. It should be noted that whilst Affinity Water and the Applicant have been positively engaging on technical matters relating to the Project, the precise impacts on Affinity Water's water supply apparatus (and required mitigation) will very much depend on the detailed design of the Project, given the extent of the Order limits and powers sought over them.
- 4.3. Given this, on-going engagement with the Applicant is required.
- 4.4. It is acknowledged many (or all) of these points could be adequately addressed through satisfactory protective provisions for the benefit of Affinity Water. As such, Affinity Water wishes to engage with the Applicant on these as soon as possible.

Land Interests

- 4.5. Having reviewed the powers sought over land in the draft DCO, Affinity Water does not have any specific concerns at this stage in respect of any of its land-holdings, aside from where it maintains rights to maintain apparatus (on which, see above).
- 4.6. However, suitable access to any existing operational land will need to be maintained during both construction and operation of the Project.

Water Sources

- 4.7. Given its statutory duties, Affinity Water has a particular interest in ensuring any activities associated with the Project would not adversely affect any of its water sources.

- 4.8. In this regard, Affinity Water has two primary concerns which, to date, have not been adequately addressed by the Applicant.
- 4.9. Firstly, foundation works associated with the Project present a risk to water sources. In this regard, Affinity Water requires commitments from the Applicant in relation to:
- 4.9.1. engaging with (and seeking agreement from) Affinity Water on the proposed method of works that could impact Affinity Water's water sources, as well as the Hydrogeological Risk Assessment and Construction Quality Assurance Plan (both of which are mentioned in Appendix 17.6 (Foundation Works Risk Assessment [APP-126]) of the Environmental Statement;
 - 4.9.2. providing monitoring data to Affinity Water in a timely manner, as well as an interpretative report of that data; and
 - 4.9.3. engaging with (and seeking agreement from) Affinity Water to any measures necessary where additional control/mitigation measures are required to avoid impacts on its water sources.
- 4.10. Secondly, Affinity Water is concerned that the discharge of treated water from the proposed onsite drainage water treatment plant (listed at Work No. 4d in Schedule 1 to the draft DCO) into the soakaway or otherwise could cause issues with the water sources used by Affinity Water for potable supplies.
- 4.11. The systems being proposed by the Applicant to control the water system appear complex and Affinity Water is not aware of them being used before. Affinity Water therefore seeks a commitment from the Applicant that active monitoring will be undertaken to ensure the system is operating properly (and reaching a particular performance specification in respect of discharge levels that Affinity Water should be consulted upon and approve prior to the water treatment plan coming into operation). In addition, where such monitoring reports any issues with the system, both Affinity Water and the Environment Agency should be made aware of this as soon as possible, to ensure appropriate mitigation is discussed, approved and implemented as soon as possible.

Water Demand

- 4.12. Through engagement to date between Affinity Water and the Applicant, Affinity Water has been clear as to the pressures it faces in respect of demand for water in the area of the Project. As part of those discussions, it is Affinity Water's understanding that the Applicant does not propose to increase its demand for water as a result of the Project from the current baseline, aside from short term peaks during construction activities.
- 4.13. Affinity Water is content with these proposals from the Applicant but is concerned to ensure that this commitment is secured by some form of legally binding arrangement. Without this, Affinity Water could be subject to unexpected increased demand on an on-going basis, which will only exacerbate its ability to supply water to residents and businesses in its supply area.
- 4.14. It is hoped that the current engagement between Affinity Water and the Applicant will ensure this issue is sufficiently addressed, but no suitable mechanism for enforcement has yet been entered into.

DCO Requirements

- 4.15. Affinity Water acknowledges that the requirements contained in Schedule 2 to the draft DCO are the primary means through which mitigation is to be secured in relation to the construction and operation of the Project.

- 4.16. However, Affinity Water is concerned that it appears the Applicant does not intend for Affinity Water to have any formal role in relation to requirements of interest to it. For example, the measures contained in the Code of Construction Practice [APP-049] secured by paragraph 8 of Schedule 2 to the draft DCO are of material interest to Affinity Water, given the risks to its water sources (see above). However, Affinity Water was not provided with a draft of that document prior to the DCO application being submitted and nor does it appear to have any formal role under it, aside from in relation to water use profiling which is but one issue Affinity Water has an interest in.
- 4.17. Affinity Water is seeking an approval role in relation to certain water-related matters to ensure its interests are sufficiently protected, specifically in relation to, for example:
- 4.17.1. the construction surface water management strategy (paragraph 8(2)(c));
 - 4.17.2. the pollution incident control plan (paragraph 8(2)(g)); and
 - 4.17.3. the dust management plan (in respect of dust suppression techniques) (paragraph 8(2)(h)).
- 4.18. In addition, Affinity Water notes that various other construction requirements in Schedule 2 to the DCO (e.g. in relation to contamination in paragraph 12, surface and foul water drainage in paragraph 13 (which is particularly critical, given it is understood this will set the performance standards of the water treatment plant mentioned above) and remediation in paragraph 17) contain no formal role for Affinity Water, even though it has a clear interest in these. As such, as a minimum, Affinity Water seeks some form of commitment from the Applicant that engagement will be undertaken on these matters between the parties, prior to any formal submissions being made by the Applicant under these requirements.
- 4.19. Finally, Affinity Water is surprised to see no mention of water-related matters in Parts 3 and 4 of Schedule 2 to the draft DCO, which deal with the operational phase of the Project. Affinity Water therefore queries how water-related matters are intended to be dealt with during this phase. For example, the regulatory regime in respect of the onsite water treatment, which is of concern to Affinity Water as set out above.
- 4.20. Given all of these issues, Affinity Water would welcome further engagement with the Applicant on these matters with a view to ensuring Affinity Water can be provided with commitments that sufficient mitigation and control measures will be in place for the Project (and it will have some form of role in relation to these) to protect its ability to discharge its statutory duties.

Other

- 4.21. All of Affinity Water's professional fees, and any third-party compensation it is required to pay when implementing diversions or related works, should ultimately be payable by the Applicant during the construction, operation and maintenance of the Project. This should include expenses incurred in discharging various functions directly related to the Project (e.g. the approval of designs and methods).

5. Protective Provisions

- 5.1. 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.

6. Current Position

- 6.1. 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.
- 6.2. Affinity Water will seek to continue to positively engage with the Applicant on these points.

Pinsent Masons LLP

22 August 2023