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London Luton Airport Expansion

Planning Inspectorate Scheme Ref: TR020001

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**8.08 Statement of Common Ground between London
Luton Airport Limited and Affinity Water**

Infrastructure Planning (Examination Procedure) Rules 2010

Application Document Ref: TR020001/APP/8.08

The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

**London Luton Airport Expansion Development Consent
Order 202x**

**8.08 STATEMENT OF COMMON GROUND BETWEEN LONDON
LUTON AIRPORT LIMITED (TRADING AS LUTON RISING) AND
AFFINITY WATER**

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STATEMENT OF COMMON GROUND

This Statement of Common Ground has been prepared and agreed by (1) London Luton Airport Limited (trading as Luton Rising) and (2) Affinity Water.

Signed on Behalf of LONDON LUTON AIRPORT LIMITED (TRADING AS LUTON RISING)

Signature:

Name:

Position:

Date:

Signed on Behalf of AFFINITY WATER

Signature:

Name:

Position:

Date:

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1 INTRODUCTION AND PURPOSE

1.1 Purpose of Statement of Common Ground

- 1.1.1 This Statement of Common Ground (SoCG) relates to an application made by London Luton Airport Limited, trading as Luton Rising (“the Applicant”), to the Secretary of State for Transport under section 37 of the Planning Act 2008 (“the Act”).
- 1.1.2 The application is for an order granting development consent, known as a Development Consent Order (DCO). The draft DCO is referred to as the London Luton Airport (Expansion) Development Consent Order. The DCO, if granted, would authorise an increase of the permitted capacity of London Luton Airport (“the airport”) to 32 million passengers per annum (mppa) (“the Proposed Development”).
- 1.1.3 This SoCG has been prepared by the Applicant and Affinity Water in respect of the Proposed Development. In particular, this SoCG focuses on:
- a. The Proposed Development’s drainage strategy, including water supply and discharge forecasts, proposals related to the Water Treatment Plant, monitoring and prevention of contaminants, and the principles of the Drainage Design Statement. Please refer to **Appendix 20.4 Drainage Design Statement [APP-137]**.
 - b. The aspects of the draft DCO which are relevant to Affinity Water’s concerns.
- 1.1.4 The purpose and possible content of SoCGs is set out in paragraphs 58-65 of the Department for Communities and Local Government’s guidance entitled “Planning Act 2008: examination of applications for development consent” (26 March 2015). Paragraph 58 of that guidance explains the basic function of SoCGs:
- “A statement of common ground is a written statement prepared jointly by the applicant and another party or parties, setting out any matters on which they agree. As well as identifying matters which are not in real dispute, it is also useful if a statement identifies those areas where agreement has not been reached. The statement should include references to show where those matters are dealt with in the written representations or other documentary evidence.”*
- 1.1.5 SoCGs are therefore a useful and established means of ensuring that the evidence at the DCO examination phase focuses on the material differences between the main parties, and so aim to help facilitate a more efficient examination process.

1.2 Parties to this SoCG

- 1.2.1 The Applicant is the owner of the airport and is a private limited company wholly owned by Luton Borough Council (LBC). The airport is managed and operated

by London Luton Airport Operations Ltd through a Concession Agreement with the Applicant and LBC. This agreement lasts until 2032.

1.2.2 Affinity Water is the largest water-only supplier in the UK. It is a relevant statutory undertaker in accordance with Schedule 1 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and so has been consulted throughout the course of the development of the Proposed Development and is also a statutory undertaker for the purposes of sections 127 and 138 of the Act.

1.2.3 The Applicant and Affinity Water are collectively referred to in this SoCG as ‘the parties’. The parties have been, and continue to be, in direct communication in respect of the Proposed Development.

1.3 Proposed Development description

1.3.1 The Proposed Development builds on the current operational airport with the construction of a new passenger terminal and additional aircraft stands to the north east of the runway. This will take the overall passenger capacity from 18 mppa to 32 mppa¹. In addition to the above and to support the initial increase in demand, the existing infrastructure and supporting facilities will be improved in line with the incremental growth in capacity of the airport.

1.3.2 Key elements of the Proposed Development include:

- a. extension and remodelling of the existing passenger terminal (Terminal 1) to increase the capacity;
- b. new passenger terminal building and boarding piers (Terminal 2);
- c. earthworks to create an extension to the current airfield platform; the vast majority of materials for these earthworks would be generated on site;
- d. airside facilities including new taxiways and aprons, together with relocated engine run-up bay and fire training facility;
- e. landside facilities, including buildings which support the operational, energy and servicing needs of the airport;

¹On 1 December 2021, the local planning authority (Luton Borough Council) resolved to grant permission for the current airport operator (LLAOL) to grow the airport up to 19 mppa, from its previous permitted cap of 18 mppa. Since then, the application was called-in and referred to the Secretary of State for determination instead of being dealt with by the local planning authority. The inquiry to consider the called-in application opened on Tuesday 27 September 2022, and closed on Friday 18 November 2022. At the time of submission of the application for development consent the outcome of the inquiry was still unknown and, therefore, all of the assessment work to date has been undertaken using a “baseline” of 18 mppa. Nonetheless, in anticipation of LLAOL’s 19 mppa planning application, the Applicant’s environmental assessments included sensitivity analysis of the implications of the permitted cap increasing. As a result, the Applicant believes that the environmental assessments are sufficiently representative of the likely significant effects of expansion, whether the baseline is 18 mppa or 19 mppa. Where the change of the baseline does affect an assessment topic, in most cases it means that the “core” assessments (using an 18 mppa baseline) report a marginally greater change than would be the case with a 19 mppa baseline. The findings of the assessment are presented in the Environmental Statement submitted with the application for development consent.

- f. enhancement of the existing surface access network, including a new dual carriageway road accessed via a new junction on the existing New Airport Way (A1081) to the new passenger terminal along with the provision of forecourt and car parking facilities;
- g. extension of the Luton Direct Air to Rail Transit (Luton DART) with a station serving the new passenger terminal;
- h. landscape and ecological improvements, including the replacement of existing open space; and
- i. further infrastructure enhancements and initiatives to support the target of achieving zero emission ground operations by 2040², with interventions to support carbon neutrality being delivered sooner including facilities for greater public transport usage, improved thermal efficiency, electric vehicle charging, on-site energy generation and storage, new aircraft fuel pipeline connection and storage facilities and sustainable surface and foul water management installations.

² This is a Government target, for which the precise definition will be subject to further consultation following the *Jet Zero Strategy*, and which will require further mitigations beyond those secured under the DCO.

2 ENGAGEMENT WITH AFFINITY WATER

2.1 Summary of engagement

- 2.1.1 The pre-application statutory consultation carried out by the Applicant, and the way in which it has informed the application for development consent, is set out in full in the **Consultation Report [AS-048]**. As a statutory undertaker, Affinity Water was consulted on the Proposed Development in accordance with section 42 of the Act.
- 2.1.2 The parties continue to be in direct communication in respect of the Proposed Development.
- 2.1.3 This SoCG between the parties is based on an extensive programme of consultation and ongoing engagement which is summarised in Table 2-1. This sets out the meetings and correspondence that took place and the topics discussed. Matters under discussion are set out in section 3.

Table 2-1: Engagement between the Applicant and Affinity Water

Date	Form of correspondence	Details
13 January 2020	Meeting – MS Teams	First meeting following 2019 Statutory Consultation – scheme presentation.
16 March 2020	Meeting – MS Teams	Second meeting following 2019 Statutory Consultation – scheme presentation.
10 September 2020	Meeting – MS Teams	Pre-meeting to discuss critical items ahead of next meeting on 24 September 2020.
24 September 2020	Meeting – MS Teams	The chemical composition of the Water Treatment Plant effluent.
19 October 2021	Meeting – MS Teams	The water supply forecast.
23 June 2022	Meeting – MS Teams	Recap and update on design, review of water supply and discharge numbers and forecasts, water quality – discharge from Water Treatment Plant.
8 July 2022	Email Correspondence	Affinity Water requested clarity on the Hydrogeological Characterisation Report [APP-136] Appendix 20.3 .
26 September 2022	Email Correspondence	Affinity Water request received on 8 July 2022 was resolved in an email on 26 September 2022.
22 November 2022	Letter	Affinity Water provided comments on relevant draft application documents.

Date	Form of correspondence	Details
20 January 2023	Email Correspondence	The Applicant shared initial responses to Affinity Water comments on application documents ahead of meeting.
23 January 2023	Meeting – MS Teams	SoCG and application documentation review and discussion.
15 May 2023	Meeting – MS Teams	Affinity Water legal team updated on DCO programme, and SoCG review.
19 May 2023	Email correspondence	Feedback on Foundation Works Risk Assessment (FWRA) provided by a technical advisor to Affinity Water.
19 May 2023	Meeting – MS Teams	Meeting arranged to discuss FWRA. A technical advisor to Affinity Water could not attend but provided feedback by email. Affinity Water legal team present.
30 May 2023	Meeting – MS Teams	Discussion with Affinity Water legal team about SoCG and next steps.
7 August 2023	Meeting – MS Teams	Meeting to provide an update on the DCO programme, legal review of the draft DCO, SoCG progress and timescales, and drainage scheme and FWRA.

3 MATTERS AGREED, ONGOING, OR NOT AGREED

Table 3-1: Summary of matters

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
3.1 Drainage strategy					
3.1.1	Water Supply and Discharge Forecasts	Affinity Water require information on the demand for water supply, based on the discharge rates, following expansion.	An estimate of water supply and discharge forecasts have been compiled to inform the impact of the Proposed Development on the local water utilities. Refer to Drainage Design Statement [APP-137] . Rainwater harvesting and treated surface water shall be utilised as recycled greywater in Terminal 2.		Ongoing
3.1.2	Water Treatment Plant (WTP) - Work No. 4d	No additional water supply demand, other than the agreed supply forecast presented during engagement meetings, should be requested from Affinity Water. Any firefighting water demand should also	Water demand is stated in the Water Cycle Strategy [APP-138] . The WTP will be constructed for treating contaminated airside surface water, and foul		Ongoing

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
		<p>place no additional demand on Affinity Water supplies.</p>	<p>water from all new buildings once live as described within the Drainage Design Statement [APP-137] and assessed within the Hydrogeological Risk Assessment [APP-139].</p> <p>The Applicant confirms no additional demand beyond the agreed supply forecast presented during engagement meetings, whether or not caused by fire demand, will be requested from Affinity Water.</p> <p>Firefighting supplies will be from grey water tanks on site.</p>		
3.1.3	WTP	<p>Treated water discharged to the Affinity Water sources should meet a specification to ensure no contamination to the water sources.</p>	<p>Detailed design of the WTP will not take place until after the DCO is granted and full specification will be finalised at the detailed design phase.</p>		Ongoing

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
			The Design Principles document (a certified document, secured by Requirement in the draft DCO) captures the requirements for future designers to achieve a compliant standard of effluent (in accordance with requirements at the time of detailed design).		
3.1.4	Perfluorooctanesulfonate acid (PFOS) and perfluorooctanoic acid (PFOA) concentration levels and plume migration	Affinity Water require information regarding the concentration found of PFOS and PFOA and evidence of migration.	The Applicant confirms there are high concentrations of PFOS and PFOA in wells close to the fire training ground and advises that investigations will be carried out to look for evidence of migration. The Applicant has provided Affinity Water with this information via email.		Ongoing
3.1.5	Drainage Design Statement	Affinity Water agree with the principles of the Drainage Design Statement and expects	The Applicant acknowledges Affinity Water's agreement with the		Ongoing

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
		to be consulted during the development of the surface and foul water drainage plan based upon these principles.	Drainage Design Statement [APP-137] Appendix 20.4.		
3.1.6	Land Plan assessment and details of affected apparatus	Affinity Water request details of impacts on its apparatus, assets and land.	<p>Affinity Water appears in the Book of Reference [APP-011] and plots are included on the Land Plans [AS-011].</p> <p>The draft DCO [AS-005] includes protective provisions within which seek to provide protection for Affinity Water's assets as the detailed design is developed and construction activities commence following approval of the DCO.</p>		Ongoing
3.1.7	Climate change and mitigation measures	Affinity Water is satisfied with engagement that has taken place regarding the future impacts of climate change on water resources in Luton and how mitigation measures	Noted.	Table 9.5 in Chapter 9 of the Environmental Statement [APP-035]	Agreed

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
		<p>embedded in the Drainage Design Statement (such as water reuse and rainwater harvesting) will help to minimise the impact of the project on local water resource availability.</p>			
<p>3.2 Foundation Works Risk Assessment</p>					
<p>3.2.1</p>	<p>Proposed mitigation set out in the Foundation Works Risk Assessment (FWRA) [APP-126]</p>	<p>Note the actions advised in the FWRA overall seem prudent.</p> <p>However, the proposed mitigation does not directly cover all the risks identified and does not place a strong enough obligation on the Applicant and its contractor to actively involve Affinity Water in the development of the solution, and the demonstration that the planned outcomes have been achieved. There is also no commitment to involving Affinity Water in setting any ground water trigger levels and determination of the additional</p>	<p>The Applicant notes this. A low risk to groundwater has been identified in the FWRA [APP-126] associated with the likely piling methodologies to be adopted.</p> <p>However, in addition to the FWRA Appendix 17.6 [APP-126], an environmental permit will be obtained for the works on the landfill, the application will require supporting documentation including:</p>		<p>Ongoing</p>

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
		<p>mitigations to be taken in the event these are exceeded.</p> <p>Affinity Water request firmer commitments from the Applicant, to continued engagement and consultation with Affinity Water in particular including to obtain Affinity Water’s agreement for:</p> <ul style="list-style-type: none"> - The proposed method of work to mitigate the risk to groundwater due to the removal and reduction of the landfill material and the creation of the foundations. - Proposed groundwater trigger levels - Additional control /mitigation measures 	<ul style="list-style-type: none"> • Hydrogeological Risk Assessment [APP-139] Appendix 20.6 – piling. This would be produced at detailed design. The report would include assessment of the risk to groundwater from creation of foundations through the landfill, mitigation measures to remove/reduce these, investigation and action levels to trigger additional control measures. • Construction Quality Assurance Plan (CQA) provides information on detailed piling design, control measures and method statement. • Evidence the appointed lead 		

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
			<p>contractor has the required experience and holds relevant industry qualification.</p> <ul style="list-style-type: none"> • Groundwater monitoring programme, during the pre-construction, construction and post construction phases. <p>The documentation outlined above will be agreed with the Environment Agency as the statutory regulator for water. The environmental permit would not be issued until the regulator was satisfied with the assessments and control / mitigation measures. Further the Environment Agency are to issue new guidance on piling through landfills and a groundwater authorisation will likely have to be obtained prior to any piling works. This will be</p>		

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
			<p>sufficiently protective of the Affinity Water’s potable water borehole at King’s Walden.</p> <p>Refer to 3.3.2 for the Applicant’s response to Affinity Water’s request for continued engagement.</p>		
3.2.2	Outline Remediation Strategy	Obtain Affinity Water’s agreement to relevant sections of the ORS	<p>The ORS [APP-125] has been submitted with the application for development consent and Affinity Water have had the opportunity to review this document.</p> <p>In addition, the lead contractor is to produce a detailed Remediation Strategy largely based on the ORS Appendix 17.5 [APP-125], to be agreed with the relevant planning authority following consultation with the</p>		Ongoing

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
			Environment Agency, prior to works commencing. Refer to 3.3.2 for the Applicant's response to Affinity Water's request for continued engagement.		
3.2.3	Proposed mitigation set out in FWRA	Provide monitoring data in a timely manner and an interpretative report of the results.	Groundwater monitoring is currently ongoing, the results and an interpretation can be provided to Affinity Water. Refer to 3.3.2.		Ongoing
3.3 Comments on the draft DCO					
3.3.1	Mitigation	Request that water related issues are a component of the operational mitigation regime.	Discussions are ongoing between Affinity Water and the Applicant to further understand these water related issues.		Ongoing
3.3.2	Request for Affinity Water to be included as a consultee to the discharging authority	Request that Affinity Water is included as a consultee to the discharging authority in relation to specific requirements, such as those	The Applicant is willing to discuss a legal side agreement and requests that Affinity Water particularises its concerns		Ongoing

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
		relating to contaminated land and groundwater.	further so that heads of terms can be developed.		
3.3.3	Draft Code of Construction Practice (CoCP) timings	Affinity Water suggest it would be preferable that the CoCP is in place prior to advanced works commencing, or other suitable safeguards put in place.	<p>The DCO now provides that the CoCP [APP-049] will be in place prior to such works commencing.</p> <p>The definition of “commence” which was in article 2, has now been moved to Schedule 2, para. 1, and only applies “in this Schedule”. The “carve outs” therefore do not apply to uses of “commence” other than in that Schedule.</p> <p>Article 2 defines “Code of construction practice” as “the document of that description referenced in Schedule 8 (documents to be certified) and certified by the Secretary of State”.</p> <p>Requirement 8(1) provides that “The authorised development must be carried out substantially in</p>		Ongoing

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
			<p>accordance with the code of construction practice and the subsequent plans approved under the code of construction practice ...”</p> <p>Requirement 8(2) (as now amended) provides that “<u>No part of the authorised development may commence</u> until the following management plans identified in the code of construction practice have been developed by the contractor in accordance with the outline management plans provided in the code of construction practice and have been approved in writing by the relevant planning authority ...”</p> <p>Article 48 (certification of documents, etc) additionally provides that those plans and documents listed in Schedule 8 (documents to be certified), which include</p>		

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
			<p>the CoCP [APP-049] Appendix 4.2, are to be submitted by the undertaker to the SoS for certification “as soon as practicable after the making of this Order.”</p>		
3.3.4	Draft CoCP	<p>The draft CoCP does not include sufficient protections in relation to water.</p> <p>As the CoCP covers the construction phase Affinity Water request additional information in relation to:</p> <p>a) construction related issues e.g. Discharge of construction water from the site, the management of surface water during the remediation of the former landfill, foundation works arrangements as above, avoidance of using water for dust suppression, and</p> <p>b) interim arrangements for the management of water on site whilst moving from the current arrangements to those where</p>	<p>The CoCP [APP-049] submitted with the application describes the high-level requirements and principles to be adopted by the lead contractor in development in their detailed plans on appointment and prior to construction.</p> <p>This includes the requirement for the lead contractor to prepare a Construction Surface Water Management Strategy (CSWMS) for the management of construction operations, produced as part of their Environmental Management System (EMS).</p>		Ongoing

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
		<p>the full new treatment plant is installed and commissioned</p>	<p>The preparation of this CSWMS, and its approval by the relevant planning authority, is secured as part of the CoCP under Requirement 8 of the draft DCO [AS-067].</p> <p>Further detail on the issues raised is not available at this stage and needs to be developed by appointed lead contractor after consent is gained, as part of the CSWMS. However, the requirement to develop this information can be clarified in a revised CoCP if this is considered suitable and the wording can be agreed with Affinity Water.</p>		
3.3.5	<p>Draft DCO Article 17 (now Article 18) (discharge of water)</p>	<p>Further information required on intended discharges and any mitigation measures that will be secured and implemented during construction and operation, to ensure the integrity of Affinity Water's</p>	<p>Assessment Phase 1: 5 l/sec Surface Water (SW) shall be discharged to Thames Water (TW). Foul Water (FW) discharge remains unchanged.</p>		Ongoing

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
		<p>water sources are not impacted.</p>	<p>Assessment Phase 2: SW discharges by infiltration to ground, and contaminated SW shall be taken to the proposed WTP as necessary and then discharged to the ground. FW from T2 shall be processes at the WTP. The treated effluent shall be channelled to the infiltration tank (Tank 3). The liquid discharge to the ground shall be to the acceptable guidelines, whilst the solids by product shall be collected and effectively disposed offsite.</p> <p>Mitigation measures related to the construction phase are described within the CoCP Appendix 4.2, and those related to the operational phase are described in the Drainage Design Statement Appendix 20.4 and the</p>		

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
			FWRA Appendix 17.6 within the ES.		
3.3.6	Draft DCO Articles 18 (now Article 19) (protective work to buildings) and 19 (now 20) (authority to survey and investigate land)	Request further information on the potential use of the powers in Articles 18 and 19 in relation to Affinity Water assets, given the powers are not limited to the Order Limits.	The intention of these articles is to enable the Applicant to undertake surveys and investigations as part of future design phases, to identify any changes required in the event of the Proposed Development impacting on Affinity Water assets and to develop solutions. Whilst the vast majority of such inspections would be within the Order Limits there may be a need to trace services which emanate beyond the Order Limits, for example to identify a valve chamber which would potentially need to be isolated to undertake works within the Order Limits.		Ongoing
3.3.7	Draft DCO part 5 (powers of	All proposed diversionary routes for Affinity Water assets should be included within the	The Applicant considers that all land and rights needed for delivery of the scheme,		Ongoing

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
	acquisition and possession)	Order Limits, such that the Applicant or Affinity Water can secure necessary land rights for replacement apparatus using DCO powers where necessary.	including any land and rights required for utility diversion or protection works, have been included within the Order Limits.		
3.3.8	Draft DCO Article 35 (now Article 36) (apparatus and rights of statutory undertakers in stopped-up streets)	Request further discussions regarding Article 35 of the draft DCO. Affinity Water do not consider that it should be responsible for seeking the relevant powers to relocate apparatus.	This Article is a standard provision in DCOs; however, the Applicant is happy to discuss in the context of the wider discussions around potential modifications to the protective provisions Affinity Water may be seeking.		Ongoing
3.3.9	Draft DCO Schedule 7 (protective provisions)	Affinity Water require amendments to the protective provisions in the draft DCO, or a separate legal agreement to secure the required commitments from the Applicant, to ensure Affinity Water's interests are adequately protected.	The protective provisions in Schedule 7 for all statutory undertakers are precedented – the Applicant is aware that bespoke protective provisions for particular undertakers are also precedented. The Applicant is happy to discuss modified/bespoke		Ongoing

SoCG ID	Matter	Affinity Water position	The Applicant position	Source of agreement	Agreed / Ongoing / Not agreed
			protective provisions with Affinity Water.		
3.3.10	Draft DCO Schedule 7	Affinity Water seeks a commitment from the Applicant to not acquire any land interests of Affinity Water, as well as apparatus, unless by way of agreement.	Discussions are ongoing between Affinity Water and the Applicant regarding this.		Ongoing
3.3.11	Draft DCO Schedule 7 (removal of apparatus)	Regarding the provisions around needing to use 'best endeavours' to secure necessary rights for replacement apparatus, where that apparatus is to be located in land outside of the Applicant's, the Applicant should be securing all necessary land as part of the DCO, and it is unreasonable for the Applicant to be under a 'best endeavours' obligation, which could result in Affinity Water needing to use statutory powers to secure rights.	Discussions are ongoing between Affinity Water and the Applicant regarding this.		Ongoing