

LONDON LUTON AIRPORT EXPANSION PROJECT

WRITTEN SUBMISSION 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 submission is made on behalf of Affinity Water ahead of Deadline 6 of the Examination on 8 December 2023.
- 1.2. As detailed in its Relevant Representation [**RR-0019**] and Written Representation [**REP1-030**], 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 [**REP5-003**] (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 and Written Representation) to the Project. Whilst Affinity Water does not object *in principle* to the Project, its statutory duties compel it to maintain its objection 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.
- 2.2. The Applicant has engaged with Affinity Water in response to the issues raised by Affinity Water in its Relevant Representation, Written Representation and Statement of Common Ground (**SOCG**) [**REP3-031**]. Discussions are ongoing between the parties on the terms of bespoke protective provisions that would be resolve many of the concerns raised by Affinity Water.
- 2.3. In the absence of an agreement yet being reached, and in light of the Applicant's updated project documentation (including the Design Principles [**REP5-034**] and Water Resources and Flood Risk [**REP4-009**]), the discussions between the Applicant and Affinity Water, and the Applicant's responses to the Examining Authority's first written questions [**REP4-066**], Affinity Water wishes to bring the following matters to the Examining Authority's attention:
 - 2.3.1. the Applicant's proposed measures to manage water demand, as outlined in the Design Principles are not adequate as they do not address water demand during construction and they are inconsistent with Affinity Water's statutory duties;

- 2.3.2. Affinity Water considers Schedule 2 of the draft DCO should include a requirement that reflects the Applicant's commitment to not increase its water demand above its water usage levels in 2019;
 - 2.3.3. the draft DCO needs to be amended to incorporate the role of Affinity Water in the preparation and approval of various management documentation (which are outlined in paragraph 3.14 below);
 - 2.3.4. Affinity Water requires monitoring data in relation to the Applicant's water usage throughout construction, use, operation and maintenance of the Project, as well as monitoring data in relation to the management plans outlined in paragraph 3.14 below;
 - 2.3.5. the Water Resources and Flood Risk is deficient as it is unclear how the obligations included in Chapter 20.13 of that document are secured by the draft DCO. The Water Resources and Flood Risk also outlines how the methodology for monitoring of surface water and groundwater quality will be approved. Affinity Water should also have an approval role in approving this methodology as it involves a discharge to the underlying aquifer, which could be detrimental to the treatment of potable water; and
 - 2.3.6. Affinity Water is concerned with the 'deemed approval' mechanism in paragraph 35(3) of Schedule 2 of the draft DCO, particularly where Affinity Water does not have any control over the discharging authority's determination of applications under paragraph 35.
- 2.4. The above points do not replace the issues raised in Relevant Representation and Written Representation submitted by Affinity Water.

3. Further detail on the impact of the Project on Affinity Water

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

Water Demand

- 3.2. Through engagement to date between Affinity Water and the Applicant, as well as Affinity Water's Written Representation and its response to the first written questions [REP4-108], Affinity Water has been clear as to the pressures it faces in respect of demand for water in the area of the Project. The impacts of any increased water demand are outlined in Affinity Water's Written Representation.
- 3.3. As part of the discussions with the Applicant and the Applicant's comments in SOCG ID 3.1.2 of the SOCG, the Applicant does not propose to increase its demand for water as a result of the Project from the airport water demand in 2019 baseline, aside from short term peaks during construction activities. Volume 5 Environmental Statement and Related Documents, 5.02 Appendix 20.5 Water Cycle Strategy [REP4-033] states that the '2019 baseline' was:
- 3.3.1. terminal use: 4.2 l/s (passengers and staff); and
 - 3.3.2. other water uses associated with airside activities: 3.3 l/s.
- 3.4. Paragraph SUS.15 of the Design Principles has been updated to require the detailed design to include water efficiency measures as are necessary, so far as reasonably practicable, to maintain water demand (excluding construction water demand) at the '2019

baseline.’ Paragraph DDS.03 of the Design Principles imposes the same obligation as SUS.15 in respect of the drainage works design principles.

- 3.5. The current wording of paragraphs SUS.15 and DDS.03 of the Design Principles is deficient as:
 - 3.5.1. The paragraphs do not address the implementation of water efficiency measures, or a water demand level during construction. Based on the information provided by the Applicant, the water demand will peak during the construction period. As outlined in Affinity Water’s response to the first written questions, the proposed exceedance during construction to the ‘2019 baseline’ is a significant increase; and
 - 3.5.2. the paragraphs are subject to what the Applicant considers is reasonably practicable.
- 3.6. The vague drafting in paragraphs SUS.15 and DDS.03 is not acceptable to Affinity Water, especially in light of Affinity Water’s statutory duties. Affinity Water presses for the Design Principles to be updated so that water demand during construction is subject to the same water efficiency measures and the ‘reasonably practicable’ caveat is removed. Affinity Water’s response to the first written questions includes proposed drafting for these paragraphs.
- 3.7. In addition, Affinity Water requests that Schedule 2 of the draft DCO is updated to include a commitment that the Applicant does not seek additional water from Affinity Water above the ‘2019 baseline.’ Affinity Water’s response to the first written questions includes proposed drafting for this requirement.
- 3.8. Affinity Water is currently in discussions with the Applicant about the above matters, as well as the appropriate process in the event that the Applicant requires water supply that exceeds the 2019 levels.

Issues with Water Resources and Flood Risk [REP4-009]

- 3.9. As outlined in SOGC IDs 3.2.3, 3.3.2 and 3.3.4 of the SOCG, Affinity Water has concerns regarding the monitoring of surface water and groundwater quality, and has requested to be involved in the approval process for specific requirements, such as those relating to contaminated land and groundwater.
- 3.10. In particular, Affinity Water wishes to draw the Examining Authority’s attention to paragraph 20.13.2 of the Water Resources and Flood Risk document. This paragraph states that the methodology for monitoring surface water and groundwater quality will be completed in line with a methodology agreed by the Environment Agency and Thames Water. It is unclear why Affinity Water has been excluded from the methodology approval process, as there will be a discharge to the underlying aquifer, which could be detrimental to the treatment of potable water. Accordingly, Affinity Water requests that the Water Resources and Flood Risk is updated so that Affinity Water has an approval role in approving the methodology for monitoring surface water and groundwater quality.
- 3.11. It is unclear how Chapter 20.13 of the Water Resources and Flood Risk document, particularly paragraphs 20.13.2 and 20.13.3 are secured by the draft DCO. Affinity Water requires the monitoring of surface water and groundwater quality, as well as the monitoring of water consumption, to be secured in the draft DCO. Affinity Water is discussing how the draft DCO should secure these monitoring requirements with the Applicant, as part of its broader negotiations for amended protective provisions.
- 3.12. Affinity Water understands the Applicant will address these issues through the submission of an updated Code of Construction Practice and draft DCO at Deadline 6.

Affinity Water's consultation role in the preparation of management plans

- 3.13. As outlined in its Written Representation, 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.
- 3.14. Based on the documents that are currently secured by Schedule 2 of the draft DCO, Affinity Water is seeking a consultation role in relation to the following documents:
 - 3.14.1. each construction surface water management strategy, prepared in accordance with paragraph 7(2)(c) of Part 2 of Schedule 2 to the draft DCO;
 - 3.14.2. each pollution incident control plan, prepared in accordance with paragraph 7(2)(g) of Part 2 of Schedule 2 to the draft DCO;
 - 3.14.3. each dust management plan, prepared in accordance with paragraph 7(2)(h) of Part 2 of Schedule 2 to the draft DCO;
 - 3.14.4. any written scheme and programme prepared in accordance with paragraph 11(2) of Part 2 of Schedule 2 to the draft DCO;
 - 3.14.5. any verification plan prepared in accordance with paragraph 11(4) of Part 2 of Schedule 2 to the draft DCO;
 - 3.14.6. any verification report prepared in accordance with paragraph 11(5) of Part 2 of Schedule 2 to the draft DCO and
 - 3.14.7. the remediation strategy prepared in accordance with paragraph 16 of Part 2 of Schedule 2 to the draft DCO.
- 3.15. Affinity Water also requests that paragraph 11(1) of Part 2 of Schedule 2 to the draft DCO is amended so that Affinity Water is included in the list of bodies that are notified if any land affected by contamination is found, including groundwater. In this occurrence, Affinity Water also requires the Applicant to provide Affinity Water with any information it reasonably requests that relates to the relevant contaminated land.
- 3.16. If Affinity Water is included as a required consultee during the preparation of the above documents, the draft DCO must be updated to ensure the relevant planning authority is aware of the parties it must consult with before approving the relevant documents.
- 3.17. The above list of amendments may change as a result of any subsequent amendments to the draft DCO.
- 3.18. Affinity Water understands the Applicant will address most of these issues through the submission of an updated Code of Construction Practice and draft DCO at Deadline 6. Affinity Water is still in discussions with the Applicant in relation to the provision of any information Affinity Water reasonably requests, in the event that paragraph 11 of Part 2 of Schedule 2 is triggered.

'Deemed approval' mechanism

- 3.19. Schedule 2 paragraph 35(3) of the draft DCO includes a deemed approval mechanism for applications made under paragraph 35(1). Affinity Water considers the risk associated with the implementation of, inter alia, management plans without Affinity Water's consultation, is disproportionate to the potential delay in obtaining approval from the discharging authority.

- 3.20. This is particularly an issue as Affinity Water does not have an approval role in respect of these applications. Accordingly, Affinity Water's ability to comment on these applications is reliant on the discharging authority responding to, and determining, an application within the prescribed period.
- 3.21. Affinity Water therefore seeks paragraph 35(3) to either be removed from the draft DCO, or an exception be included that excludes applications where Affinity Water is a consultee. Affinity Water has raised this issue with the Applicant and is yet to receive a response.

Monitoring data

- 3.22. Further to Affinity Water's concerns regarding monitoring that were outlined in its Written Representation, Affinity Water requires the Applicant to provide monitoring data on a quarterly basis, with the opportunity to receive additional data in the event the monitoring results provided by the Applicant are a concern. The monitoring data must include the water use for the Project, as well as the water use for the operation of the Luton Airport, for each relevant period. The provision of this data will enable Affinity Water to monitor the Applicant's compliance with its commitments regarding water usage. This is particularly important given the water scarcity concerns raised above.
- 3.23. Affinity Water also requires the Applicant to provide Affinity Water with monitoring data (including interpretative reports) in relation to the management plans outlined in paragraph 3.14 above, as well as the surface and foul water drainage plan, prepared in accordance with paragraph 12 of Part 2 of Schedule 2 to the draft DCO. The provision of this data will enable Affinity Water to monitor the Applicant's compliance with the relevant management plans and minimise the risk of contamination. Monitoring ground water levels will also support the review and verification of the Project design, which is particularly important given the risks to infiltration arising from the 1 metre proximity of the water infiltration tanks to the highest ground water level recorded.
- 3.24. Affinity Water is still in discussions with the Applicant in relation to the provision of monitoring data and expects this will be addressed through modified protective provisions.

Other matters

- 3.25. The issues raised by Affinity Water in its submissions to date reflect the current Project design and documentation. Any subsequent changes may result in additional negative impacts to Affinity Water.
- 3.26. Affinity Water reserves its right to make additional submissions on any subsequent amendments.

4. Current Position

- 4.1. If the Applicant and Affinity Water can reach agreement on suitable legally robust protections to address the concerns detailed above, as well as the issues raised in the Relevant Representation and Written Representation, 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.
- 4.2. Affinity Water will seek to continue to positively engage with the Applicant on these points.