

APPLICATION BY LONDON LUTON AIRPORT LIMITED FOR LONDON LUTON AIRPORT EXPANSION

AFFINITY WATER'S RESPONSE TO DOCUMENTS SUBMITTED AT DEADLINE 7: 9 JANUARY 2024 & EXAMINING AUTHORITY'S RECOMMENDED AMENDMENTS TO THE APPLICANT'S DRAFT DCO SUBMITTED ON 16 JANUARY 2024.

Please find below comments from Affinity Water (**AW**) [ref no. 20040591] in relation to the following documents that were submitted into the Examination at Deadline 7 (9 January 2024) and 16 January 2024:

- Applicant's response to comments on Draft DCO submitted at Deadline 6 [**REP7-062**];
- Applicant's response to Deadline 6 submissions [**REP7-063**]; and
- Examining Authority's Consultation Draft Development Consent Order (DCO) Schedule of Examining Authority's recommended amendments to the Applicant's draft DCO submitted at Deadline 7 [**PD-018**].

Applicant's response to comments on Draft DCO submitted at Deadline 6

Reference	AW's Deadline 6 submission	Applicant's Response	AW's further comments
1.1	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;	The Design Principles do not address construction matters, which are addressed through the Code of Construction Practice (CoCP) [REP6-003]. The approach to water efficiency is outlined in section 17.6 of the CoCP. To address Affinity Water's concerns, the Applicant is continuing to engage with Affinity Water to reach agreement on a form of protective provisions, secured by side agreement, and related updates/modifications to the Requirements in Schedule 2 of the Draft DCO [TR020001/APP/2.01] and related secured documents (including the CoCP).	AW agrees the Code of Construction Practice [REP6-003] (CoCP) addresses water demand during construction. AW is continuing to negotiate the wording in the modified protective provisions, draft Development Consent Order [REP7-003] (draft DCO) and the CoCP to adequately address AW's concerns about managing water demand during construction.
1.2	The current wording of paragraphs SUS.15 and DDS.03 of the Design Principles is deficient as: <ul style="list-style-type: none"> • The paragraphs do not address the implementation of water efficiency 	The Design Principles do not address construction matters, which are addressed through the Code of Construction Practice (CoCP) [REP6-003].	AW agrees the CoCP addresses water efficiency. AW is continuing to negotiate the wording in the modified

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	<p>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</p> <ul style="list-style-type: none"> the paragraphs are subject to what the Applicant considers is reasonably practicable. <p>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.</p>	<p>The approach to water efficiency is outlined in section 17.6 of the CoCP. To address Affinity Water's concerns, the Applicant is continuing to engage with Affinity Water to reach agreement on a form of protective provisions, secured by side agreement, and related updates/modifications to the Requirements in Schedule 2 of the Draft DCO [TR020001/APP/2.01] and related secured documents (including the CoCP).</p>	<p>protective provisions, draft DCO and the CoCP to adequately address AW's concerns about water efficiency.</p>
1.3	<p>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 ThamesWater. 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</p>	<p>Paragraph 20.13.2 of Chapter 20 Water Resources and Flood Risk of the ES [REP4-009] states "The monitoring of surface water and groundwater quality will be completed in line with a methodology agreed by the Environment Agency and Thames Water (during permitting processes) as runoff from the Proposed Development will be discharged to the underlying aquifer and the Thames Water network." The CoCP [REP6-003], para. 18.8.2, as updated at Deadline 6, now requires the lead contractor, as part of that permitting process, to consult the Environment Agency and the relevant water and sewerage undertakers (i.e. Affinity Water and TWUL) regarding the water quality, flow and level monitoring to be undertaken for watercourses and groundwater that will be affected by</p>	<p>The adequacy of the monitoring surface water and groundwater quality during operation, use and maintenance of the authorised development turns on the drainage design principles contained in the Design Principles [REP7-034]. AW is engaging with the Applicant about the wording of the drainage design principles.</p> <p>The methodology referenced in paragraph 20.13.3 of Chapter</p>

	<p>approving the methodology for monitoring surface water and groundwater quality.</p>	<p>construction works or the discharge of surface water run-off. The Applicant does not agree, however, that Affinity Water should have an approval role – that role is exercised, through the permitting processes, by the EA and TWUL.</p> <p>Paragraph 20.13.3 of Chapter 20 Water Resources and Flood Risk of the ES [REP4-009] refers to agreeing a water use monitoring methodology with Affinity Water. Paragraph 17.6.7 of the CoCP [REP6-003] makes related provision: “As part of the water use profiling exercise, the lead contractor will liaise with Affinity Water Ltd. The volumes of water used will be agreed with Affinity Water Ltd and monitored.”</p>	<p>20 Water Resources and Flood Risk of the ES [REP4-009] relates to water consumption, which is a separate issue to surface water and groundwater quality.</p>
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Applicant’s response to Deadline 6 submissions

Reference ID	AW’s Deadline 6 submission	Applicant’s Response	AW’s further comments
ID.1	<p>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</p>	<p>As regards use of water during construction —</p> <ul style="list-style-type: none"> • The Applicant’s revised Code of Construction Practice (CoCP) [REP6-003], submitted at Deadline 6, contains modifications for Affinity Water’s (AW) benefit in respect of use of water during construction: the Construction Surface Water Management Strategy (CSWMS), to prepared in accordance with paragraph 7(2)(c) of Part 2 of Schedule 2 to the Order, is listed in section 2 of the CoCP as a document to be approved by the relevant planning authority. Reference has been added in CoCP para 2.1.6 for the relevant planning authority to consult relevant statutory undertakers (which would include Affinity Water) as part of this approval process. • Para. 20.13.1 of Chapter 20 Water Resources and Flood Risk of the Environmental Statement (ES) [REP4-009] states: “The CoCP identifies the requirement for the lead contractor to outline a monitoring regime for surface water and groundwater quality, groundwater levels and water consumption during construction. This would ensure that pollution prevention measures are installed and operated effectively and, if necessary, the lead contractor can 	<p>AW has responded to the Applicant’s comments in rows 1.1-1.3 above.</p> <p>AW is continuing to engage with the Applicant on the water usage levels and anticipates the modified protective provisions and CoCP will address this issue. If AW and the Applicant are not able to reach an agreement, AW requests that the DCO includes a requirement that reflects the Applicant’s commitment to not increase its water demand above its water usage levels in 2019. The proposed wording in ‘New Requirement 1’ of the</p>

		<p>implement additional measures to mitigate any potential incidents.” Para. 20.13.3 refers to agreeing a water use monitoring methodology with Affinity Water. Paragraph 17.6.7 of the CoCP [REP6-003] makes related provision: “As part of the water use profiling exercise, the lead contractor will liaise with Affinity Water Ltd. The volumes of water used will be agreed with Affinity Water Ltd and monitored.”</p> <p>As regards water use during the operation, use and maintenance of the authorised development, the Design Principles, an updated version of which was submitted at Deadline 7 [TR020001/APP/7.09] require the incorporation of water efficiency measures to limit water use:</p> <ul style="list-style-type: none"> • DDS.05 states: “The detailed design will incorporate water efficiency measures as detailed in SUS.15.” • DDS.06 to DDS.10 specify further water efficiency measures to be incorporated. • SUS.15 states: “Detailed design will include such water efficiency measures as are necessary, so far as reasonably practicable, to maintain water demand (excluding construction water demand) at the 2019 consumption baseline. Rainwater harvesting and greywater re-use solutions will be incorporated in detailed designs. Potable water efficiency measures will also be incorporated in the design of buildings, in order to minimise potable water demand from the statutory undertaker.” The 2019 consumption baseline 1 means 4.2 litres per second in respect of water demand for the airport terminals and 3.3 litres per second in respect of water demand for the airport non-terminals, as outlined in the Water Cycle Strategy (Appendix 20.5 of the ES [REP4-033]). The Applicant is in discussion with AW about further contractual commitments regarding water use during the operation, use and maintenance of the authorised development. 	<p>Schedule of Examining Authority's recommended amendments to the Applicant's draft DCO [PD-018] is appropriate.</p>
ID.2	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	See response to I.D1.	AW has responded to this issue in row 1.1 above.

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	are inconsistent with Affinity Water's statutory duties;		
ID.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 [Q7] below)	<p>The Applicant has incorporated the following changes into the Draft DCO [TR020001/APP/2.01] submitted at Deadline 7</p> <ul style="list-style-type: none"> Requirement 11 (Contaminated land and groundwater) to add “the relevant water undertaker” (AW and Thames Water Utilities Limited (TWUL)) as a body to be notified and/or consulted, in addition to the Environment Agency, in respect of contamination events, and to be consulted on remediation and verification plans and reports. Requirement 12 (Surface and foul water drainage), which already requires the Applicant to consult with “the relevant water and sewerage undertakers”, has been amended to specify the contents of the surface and foul water drainage plan to be produced. Requirement 16 (Remediation of Former Eaton Green Landfill) has been amended to require the relevant planning authority (as approving body) to consult with “the relevant water undertaker” in addition to the Environment Agency 	<p>AW is pleased with the amendments to the draft DCO and notes the draft DCO requires the relevant planning authority (i.e. not the Applicant) to consult with AW.</p> <p>AW understands an updated CoCP will be submitted at Deadline 8 which incorporates AW's consultation role for the construction surface water management strategy, pollution incident control plan and dust management plan, which will be prepared in accordance with paragraph 7(2)(c),(g) and (h) of Schedule 2 of the draft DCO.</p>
ID.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;	<p>Para. 20.13.3 of Chapter 20 Water Resources and Flood Risk of the ES [REP4-009] refers to agreeing a water use monitoring methodology with AW. Paragraph 17.6.7 of the CoCP [REP6-003] makes related provision: “As part of the water use profiling exercise, the lead contractor will liaise with Affinity Water Ltd. The volumes of water used will be agreed with Affinity Water Ltd and monitored.”</p> <p>Please see response I.D 3 above with regards to Requirement 12 (Surface and foul water drainage), which already requires the Applicant to consult with “the relevant water and sewerage undertakers”, and has been amended in the version of the Draft DCO submitted at Deadline 7 to specify the contents of the surface and foul water drainage plan to be produced.</p> <p>The Applicant is in discussion with AW about further contractual commitments regarding monitoring of water use in relation to the management plans.</p>	<p>Please see AW's response to row 1.3 above.</p> <p>AW is continuing to liaise with the Applicant about the provision of monitoring data, which will likely be governed by the CoCP and modified protective provisions.</p>

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ID.5	<p>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;</p>	<p>Para. 20.13.2 of Chapter 20 Water Resources and Flood Risk of the ES [REP4-009] states “The monitoring of surface water and groundwater quality will be completed in line with a methodology agreed by the Environment Agency and Thames Water (during permitting processes) as runoff from the Proposed Development will be discharged to the underlying aquifer and the Thames Water network.” The CoCP [REP6-003], para. 18.8.2, as updated at Deadline 6, now requires the lead contractor, as part of that permitting process, to consult the Environment Agency and the relevant water and sewerage undertakers (i.e. Affinity Water and TWUL) regarding the water quality, flow and level monitoring to be undertaken for watercourses and groundwater that will be affected by construction works or the discharge of surface water run-off. The Applicant does not agree, however, that Affinity Water should have an approval role – that role is exercised, through the permitting processes, by the EA and TWUL.</p> <p>Para. 20.13.3 of Chapter 20 Water Resources and Flood Risk of the ES [REP4-009] refers to agreeing a water use monitoring methodology with AW. Paragraph 17.6.7 of the CoCP [REP6-003] makes related provision: “As part of the water use profiling exercise, the lead contractor will liaise with Affinity Water Ltd. The volumes of water used will be agreed with Affinity Water Ltd and monitored.”</p>	<p>See AW’s response to rows 1.3 and ID.4 above.</p>
ID.6	<p>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.</p>	<p>See response to I.D10.</p>	<p>See response to ID.10 below.</p>
ID.7	<p>Based on the documents that are currently secured by Schedule 2 of the draft DCO, Affinity Water is seeking a consultation role</p>	<p>The Applicant has made the following changes in this regard:</p> <ol style="list-style-type: none"> 1. Change made to the CoCP [REP6-003] at Deadline 6. The Construction Surface Water Management Strategy (CSWMS) is listed in section 2 of the CoCP [REP6-003] as a document to be approved by the relevant local planning authority. Reference has been added in para 2.1.6 for the relevant planning authority to consult relevant statutory undertakers (which would include AW) as part of this approval process. In addition, AW has been 	<p>AW welcomes the updates to the Requirements in the draft DCO.</p> <p>Please also see AW’s response to rows ID.1 and ID.3 above.</p>

	<p>in relation to the following documents:</p> <ol style="list-style-type: none"> 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; 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. each dust management plan, prepared in accordance with paragraph 7(2)(h) of Part 2 of Schedule 2 to the draft DCO; 4. any written scheme and programme prepared in accordance with paragraph 11(2) of Part 2 of Schedule 2 to the draft DCO; 5. any verification plan prepared in accordance with paragraph 11(4) of Part 2 of Schedule 2 to the draft DCO; 6. any verification report prepared in 	<p>specifically named as a consultee on the lead contractor's plan for monitoring watercourses and groundwater in para 18.8.5 of the CoCP.</p> <ol style="list-style-type: none"> 2. Change made to the CoCP [REP6-003] at Deadline 6. AW has been specifically named as a consultee to the Pollution Incident Control Plan in CoCP para 18.8.5. Section 6.3.2 also now refers to "relevant water and sewerage undertakers" as parties to be notified of pollution incidents. Para 18.1.4 already referred to "appropriate approval for works from the relevant regulatory body or statutory undertaker which could affect any surface water or groundwater resource". 3. The outline for the Dust Management Plan, as detailed under para 8.1.2 of the CoCP [REP6-003] does not include reference to water efficiency measures. Water efficiency measures are however referred to in the Site Management subsection under Air Quality in the CoCP, and a cross-reference has also been included there to link this to the more detailed measures and practices set out in Section 17.6 of the CoCP on Water Efficiency, which specifically includes focus on water use for dust suppression. This section already includes a requirement for the lead contractor to liaise with AW on water use, including reaching agreement on the volumes of water to be used and the monitoring of this. 4, 5 and 6. Requirement 11 (Contaminated land and groundwater) has been amended in the version of the Draft DCO submitted at Deadline 7 to add "the relevant water undertaker" (AW and TWUL) as a body to be notified and/or consulted, in addition to the Environment Agency, in respect of contamination events, and to be consulted on remediation and verification plans and reports. 7. Requirement 16 (Remediation of Former Eaton Green Landfill) has been amended to require the relevant planning authority (as approving body) to consult with "the relevant water undertaker" in addition to the Environment Agency 	
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	<p>accordance with paragraph 11(5) of Part 2 of Schedule 2 to the draft DCO and</p> <p>7. the remediation strategy prepared in accordance with paragraph 16 of Part 2 of Schedule 2 to the draft DCO.</p>		
ID.8	<p>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.</p>	<p>See response to I.D7, at points 4, 5 and 6.</p>	<p>As noted above, AW welcomes the updates to the Requirement 11 of Schedule 2 of the draft DCO.</p>
ID.9	<p>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.</p>	<p>See responses to I.D1, I.D3 and I.D7. AW, as a relevant water undertaker, would be a specified consultee in the Order and/or in the CoCP.</p>	<p>Please also see AW's response to row ID.1 above.</p>

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<p>ID.10</p>	<p>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. 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. 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.</p>	<p>See responses to I.D1, I.D3 and I.D7 as regards AW role as consultee on the various management plans.</p> <p>Schedule 2, Part 5 (Requirements 34 to 37) (Procedure for Discharge of Requirements) provides at para. 35(3) that a "discharging authority" (a body from whom a consent, approval or agreement is required under Parts 1, 2 or 4 of Schedule 2) who does not determine an application within the specified period of eight weeks is to be taken to have granted all parts of the application (without any condition or qualification at the end of that period).</p> <p>As stated in the Explanatory Memorandum [TR020001/APP/2.02], Requirements 34, 35 and 36 provide a clear procedure for the discharge of requirements in Part 1, Part 2 and Part 4 of Schedule 2 by the discharging authority. It sets out clear time limits for decisions to be made and makes provision for circumstances where the discharging authority may undertake consultation with specified bodies, and may require further information to be provided in relation to an application for the discharge of a requirement. These time limits are considered necessary to remove the possibility for delay and provide certainty that the authorised development can be delivered by the undertaker in a timely fashion. As a Nationally Significant Infrastructure Project (NSIP), the authorised development should not be at risk of being held up due to a failure to respond to an application for consent/approval. Deemed consent provisions are well-precedented for this reason.</p> <p>Part 5 of Schedule 2 as drafted reflects the discharge of requirements provisions approved in a range of recent made DCOs, including The Southampton to London Pipeline Development Consent Order 2020, The Reinforcement to the North Shropshire Electricity Distribution Network Order 2020, the Cleve Hill Solar Park Order 2020 and the Riverside Energy Park Order 2020.</p>	<p>Please also see AW's response to rows ID.1, ID.3 and ID.7 above.</p> <p>AW presses its concerns with the deemed approval mechanism and notes that other authorities, such as the Environment Agency, have also raised concern with this mechanism [EV17-002]. AW prefers the Examining Authority's suggested amendments to Schedule 2 paragraph 35(3) [PD-018], rather than the Applicant's current drafting of this paragraph.</p>
<p>ID.11</p>	<p>Further to Affinity Water's concerns regarding monitoring that were</p>	<p>See response to I.D4.</p>	<p>See AW's response to row ID.4 above.</p>

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	<p>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.</p>		
ID.12	<p>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</p>	See response to I.D4.	See AW's response to row ID.4 above.

	<p>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.</p>		
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Schedule of Examining Authority's recommended amendments to the Applicant's draft DCO submitted at Deadline 7

AW is generally agreeable to the ExA's proposed changes to the draft DCO. AW wishes to make the submissions on the following points:

Reference	ExA's recommended amendment/insertion	AW's comment
Schedule 2		
35(3)	<p>In the event that the discharging authority does not determine an application within the period set out in subparagraph (1), the discharging authority is taken to have granted all parts of the application (without any condition or qualification at the end of that period), the undertaker may lodge an appeal for non determination under paragraph 38 (appeals to the Secretary of State) no later than 42 days starting the day after the decision or the date that the decision was due to be made by the discharging authority.</p>	<p>As noted in row ID.10 above, AW prefers the Examining Authority's suggested amendments to Schedule 2 paragraph 35(3), rather than the Applicant's current drafting of this paragraph.</p>
New Requirements		
1	<p>Water consumption (1) The undertaker must not increase the demand for water resources from the 2019 consumption baseline, unless otherwise agreed with the utility undertaker. '2019 consumption baseline' means 4.2 litres per second in respect of water demand for the airport terminals and 3.3</p>	<p>Please see AW's response to row ID.1 above.</p>

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	<p>litres per second in respect of water demand for the airport non-terminals, as defined in the Water Cycle Strategy.</p> <p>(2) A monitoring report detailing water consumption in respect of water demand for the airport terminals and non-terminals must be submitted annually from the date of commencement to the relevant planning authority in consultation with Affinity Water</p>	
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