



**DALCOUR
MACLAREN**

Application for a Certificate of Lawfulness for Proposed Use or Development

Hills Clean Water Storage Asset

Affinity Water Limited

July 2025



Project Details

Project Name	Hills Clean Water Storage Asset
Scheme Number	25000870
Report Number	001

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Appendices

Appendix Number	Document Title
Appendix 1	Preliminary Ecological Appraisal

Drawings

Drawing No.	Title	Scale
20250716__25000870_PLN_SI_1.1	Proposed Site Plan	A3@1:1250
20250716__25000870_PLN_SI_3.1	Site Location Plan	A3@1:2500

1 Introduction

1.1 Background to the CLOPUD Application

- 1.1.1 Affinity Water Limited (AWL) has commissioned Dalcour Maclaren (DM) to prepare and submit an application for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) for the installation of a partially underground clean water storage asset adjacent to their existing covered storage asset on land off Crete Road West, Kent.
- 1.1.2 The works are deemed to fall under Part 13 A(g) of the Town and Country Planning General Permitted Development Order (GPDO) (as amended) 2015 as the works are proposed within AWL's operational site and will not exceed 15 metres in height. Initial liaison with Folkestone and Hythe District Council regarding the development was carried out earlier in July 2025, where it was recommended that a lawful development certificate (proposed) be sought for the proposed development to confirm Permitted Development rights.
- 1.1.3 This application seeks a certificate from the Council to confirm that the proposed construction of the storage asset on AWL's operational land would be lawful for planning purposes under Section 192 of the Town and Country Planning Act.

1.2 Site Location and Description

- 1.2.1 The Site is located off Crete Road West, Folkestone Kent CT18 7AB (NGR: TR 21434 38283), hereafter referred to as 'the Site'. Please see drawing 20250716__25000870_PLN_SI_3.1.
- 1.2.2 The Site is bounded by:
- Existing water infrastructure to the west
 - Crete Road located to the south
 - Agricultural fields to the north
 - Residential housing to the east bounded by trees and mature vegetation.
- 1.2.3 The Site consists mainly of scrub/vegetated land with a hedgerow separating the Site from the main road.

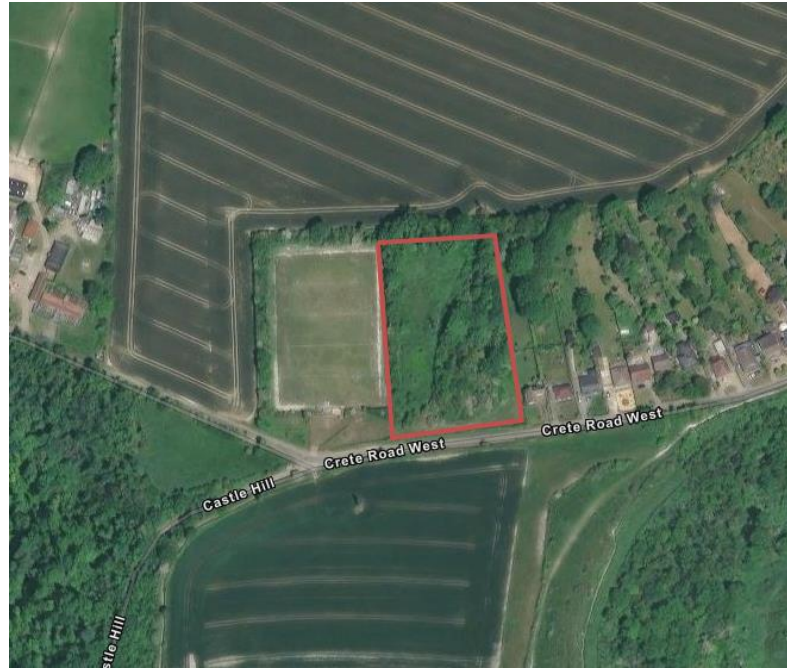


Figure 1: Proposed Development Area

- 1.2.4 The Site is located within Flood Zone 1, which has an area of less than 0.1% annual probability of flooding. Furthermore, the Environment Agency's (EA's) Long Term Flood Map shows the Site is at very low risk of flood risk from surface water.
- 1.2.5 The Site is situated within the Kent Downs National Landscape, a designated area renowned for its distinctive chalk hills and the White Cliffs of Dover. Given that the proposed asset will be partially reprofiled, located next to a similar asset, and the Site has existing screening, it is not anticipated to have a significant impact on the surrounding landscape.
- 1.2.6 A Preliminary Ecological Appraisal (PEA) was undertaken in December 2024 (see Appendix 1) to assess the potential presence of protected species and the likely effects on ecologically sensitive sites. The Site was found to have the potential to support populations of bats, GCN, Reptiles, Badgers, nesting birds and hedgehogs. GCN's have since been deemed as absent following eDNA surveys. Suitable mitigation and protected species surveys as outlined within the PEA will be implemented prior to the commencement of any works on Site in order to mitigate harm to these species.
- 1.2.7 The Folkstone to Etchinghill Site of Special Scientific Interest (SSSI) is located approximately 80 metres to the south of the Site and is also designated as a Special Area of Conservation (SAC). This area comprises mainly of semi-dry grasslands and scrubland habitats. A Habitats

Regulations Assessment (HRA) will be undertaken prior to the commencement of any works associated with the proposed development, however, the potential for impacts on designated sites is considered to be low.

2 Proposed Development

2.1 Description of the Proposed Development

- 2.1.1 AWL is proposing to install a partial underground clean water storage asset, which will measure 60m by 40m by 4m (Length x Width x Height).
- 2.1.2 The asset will be raised partially above ground level, and there will be some ground re-profiling to cover the asset.
- 2.1.3 Access to the Site is proposed via Crete Road West, with a temporary access from Gibraltar Lane.
- 2.1.4 The proposed site layout is shown within drawing no. 20250716__25000870_PLN_SI_2.1.

2.2 Need for the Proposed Development

- 2.2.1 The proposed works are required to provide improvements to the resilience of the existing water network. As AWL are a statutory undertaker and have responsibilities set out in the Water Industry Act (1991), AWL are required to develop and maintain an efficient and economical system of water supply, to ensure for the provision to provide clean potable water.
- 2.2.2 AWL is the largest water-only supply company in the United Kingdom. It owns and manages water assets and infrastructure covering approximately 4,500 square kilometres, serving over 3.8 million customers across three supply regions in the Southeast of England. AWL is committed to delivering a reliable supply of high-quality drinking water while protecting the environment and supporting long-term sustainability.
- 2.2.3 To achieve these objectives, AWL delivers its services through two principal strategic plans: the Business Plan and the Water Resources Management Plan (WRMP). These plans guide investment, operational priorities, and environmental stewardship.
- 2.2.4 The Business Plan sets out the AWL's investment strategy for the five-year period from 2025 to 2030, known as Asset Management Period 8 (AMP8). It defines capital and operational expenditure, performance targets, and key infrastructure programmes required to maintain service quality, improve efficiency, and enhance customer satisfaction.
- 2.2.5 The WRMP outlines the long-term strategy for managing water resources sustainably. It incorporates demand forecasting based on factors such as population growth, climate change, and source availability. The plan

ensures balanced water distribution across eight Water Resource Zones (WRZs), identifies environmental protection measures, and sets out the interventions required to maintain supply resilience over a 25-year planning horizon.

- 2.2.6 By 2030, without intervention, several WRZs are expected to experience headroom deficits driven by environmental constraints, demographic pressures, and long-term climatic trends. This is particularly the case in AWL's Central region, which is highly water-stressed and environmentally sensitive.
- 2.2.7 A key initiative identified in both the Business Plan and the WRMP is the Connect 2050 Programme, which plays a central role in addressing the projected supply deficit and delivering AWL's strategic outcomes. Connect 2050 tackles the challenges presented by the WRMP through a systems-based approach that includes the following strategic objectives:
- Increase the output of Water Treatment Works in WRZ6 (Wey) by 40 million litres per day (Ml/d)
 - Transfer an additional 38 Ml/d from WRZ6 to WRZs 1 to 5 (Misbourne, Colne, Lee, Pinn, and Stort)
 - Enhance strategic connectivity by constructing new booster pumping stations and trunk main interconnectors within WRZs 1 to 5 to meet localised deficits
 - Increase treated water storage capacity within WRZ5 (Stort) and WRZ7 (Dour)
- 2.2.8 To achieve the strategic objectives set out in the Connect 2050 programme during AMP8, AWL has identified the need to construct 10 megalitres (Ml) of additional treated water storage at Hills, Folkestone, Kent, located within WRZ7 (Dour). The additional storage at Hills supports the strategic objective of Increasing treated water storage capacity within WRZ7 under the Connect 2050 Programme.
- 2.2.9 The requirement for this investment has been recognised through the Price Review 2024 (PR24) process. PR24 is the regulatory framework through which Ofwat sets expenditure allowances that water companies may recover from customers during AMP8. AWL's Final Determination includes funding for this scheme within its Enhancement expenditure allowance. Enhancement expenditure covers projects that go beyond maintaining

existing service levels and deliver long-term improvements in resilience, environmental compliance, and operational capability.

- 2.2.10 To ensure delivery of this investment, Ofwat has applied a Price Control Deliverable (PCD) to the Hills scheme. PCDs are binding output commitments defined in the PR24 Final Determination. They link enhancement funding to measurable outcomes and are subject to clawback if not delivered. For this scheme, AWL is required to deliver and commission 10 MI of additional treated water storage at Hills by 2030. Failure to meet this requirement will result in financial penalties and recovery of funding.
- 2.2.11 AWL requires the additional 10 MI treated water storage at Hills to be constructed in an additional cell (compartment). Currently there is an existing 18MI single-cell storage asset which serves the Folkestone area. This new asset is to be integrated with the existing 18MI cell, resulting in a total site storage capacity of 28MI. The existing Hills Storage Asset primarily serves the Folkestone Supply Zone. This consists of approximately 20,000 properties, which is equivalent to a population of about 56,000. The scheme strengthens resilience in the region, supports climate change adaptation, and enables operational flexibility to optimise water transfers across WRZs during periods of elevated demand.

2.3 The Water Industry Act (1991)

- 2.3.1 The Water Industry Act 1991 sets out the responsibilities and powers of water and sewage companies. As AWL is a statutory undertaker and registered utility company, with responsibilities for the provision of clean, potable water, section 37(1) of the Water Industry Act sets out their duties to:

“develop and maintain an efficient and economical system of water supply within its area and to ensure that all such arrangements have been made –

(a) for providing supplies of water to premises in that area and for making such supplies available to persons who demand them; and

(b) for maintaining, improving and extending the water undertaker’s water mains and other pipes, as are necessary for securing that the undertaker is and continues to be able to meet its obligations under this Part.”

- 2.3.2 In addition, section 2(3) of the Water Industry Act, sets out AWL’s responsibility to ensure that their activities are performed:

“...in the manner...best calculated to contribute to the achievement of sustainable development.”

- 2.3.3 As such, AWL has a duty to ensure that they provide continued clean, potable water to the local area, whilst ensuring that their operations do not harm the environment and contribute to sustainable development.

3 Lawful Development

3.1 Lawful Use Considerations

- 3.1.1 This application seeks to confirm that the land the subject of the certificate is operational land and the proposed installation of the storage asset would be lawful for planning purposes under section 192 of the Town and Country Planning Act (the Act).
- 3.1.2 Section 192(2) of the Act, confirms that... *“If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application”*
- 3.1.3 The applicant is responsible for providing sufficient information to support an application. The local planning authority will need to consider whether, on the facts of the case and relevant planning law, the specific matter would be lawful.
- 3.1.4 Section 3.2 below examines the permitted development rights available to AWL in the context of the proposed development.

3.2 Part 13A (Water & Sewage Undertakers)

- 3.2.1 Schedule 2 Part 13 of the GPDO sets out the permitted development rights of Water and Sewage Undertakers. Class A of this part allows development required for the purposes of a water utility company’s statutory undertaking. This includes:

(g) any other development in, on, over or under operational land other than the provision of a building but including the extension or alteration of a building.
- 3.2.2 In addition, Part 13 also sets out a number of restrictions and conditions on these permitted development rights. A.1 sets out the conditions under which development is not permitted, in particular:

(c) in the case of any Class A(g) development, it would consist of or include the extension or alteration of a building so that—

(i) its design or external appearance would be materially affected;

(ii) the height of the original building would be exceeded, or the cubic content of the original building would be exceeded by more than 25%, or

(iii) the floor space of the original building would be exceeded by more than 1,000 square metres; or

(d) in the case of any Class A(g) development, it would consist of the installation or erection of any plant or machinery exceeding 15 metres in height or the height of anything it replaces, whichever is the greater.

- 3.2.3 As the proposed development does not consist of a building, is located within operational land and will be less than 15m in height, the proposals are deemed to fall under AWL's permitted development rights. Details of how the Site constitutes operational land is provided in Section 3.3 below.

3.3 Operational Land Definition

- 3.3.1 Operational land for the purposes of statutory undertakers is defined by sections 263 and 264 of the Town and Country Planning Act ("The Act"). Section 263 deals with the meaning of operational land and Section 264 deals with the cases in which land is to be treated as *not* operational land.

- 3.3.2 S.263(1) confirms that operational land is

'a) land which is used for the carrying out of their undertaking' and 'b) land in which an interest is held for that purpose'. S.264(2) states that this does not include "land which, in respect to its nature or situation, is comparable rather with land in general than with land which is used, or in which interests are held".

- 3.3.3 S.264 states that land should not be treated as being operational land where:

'a) the interest was acquired by them on or after 6th December 1968;' or

'b) it was held by them immediately before that date but the circumstances were then such that the land did not fall to be treated as operational land for the purposes of the 1962 Act'.

- 3.3.4 The Site is subject to lease involving the Folkestone Water Works Company (Affinity Water's predecessor), dated 6th April 1897 (title number: K977745). Therefore, it can be assumed that the land acquired by the Folkestone Water Works Company in 1897 for the purpose of carrying out their statutory undertaking and has been held for that purpose since.

Consequently, due to the acquisition of the interest prior to the 6th December 1968, the Site would constitute ‘operational land’ under Section 263 and 264 of the TCPA, with Affinity Water being the statutory undertaker.

- 3.3.5 Historic mapping also suggests the asset to the west of the proposed site has been present since the period between 1945-1965, see Figure 2 below. Later mapping and aerial imagery suggests that the Site has been in continuous use since this time and would therefore be considered operational under 264(1).



Figure 2: Historical mapping on the Ordnance Survey (OS) Outline Map dating 1945-1965 (right) and OS map dating 1948-1973 (left) (National Library of Scotland Map)

- 3.3.6 In addition, the proposed Site could also be considered operational land, as per subsection (a) of Section 264 if:
- (a) *“There is, or at some time has been, in force with respect to is a specific planning permission for its development”*
- 3.3.7 There is also previous planning history on Site which is shown to relate to an EIA SOR which was deemed non-EIA development in 2016 (Ref: Y16/0003/SCR). This request was for essential work to be undertaken by Affinity Water at the existing asset site which is located to the west of the proposed development site. Therefore, this parcel of land also benefits from operational land status under subsection (a) Section 264 of the TCPA.
- 3.3.8 Given the asset’s location within operational land registered to AWL we would consider the works to constitute permitted development under Part 13 Class A(g) of the GPDO.

- 3.3.9 Any permanent new or amended access required to the Site from Crete Road West is considered Permitted Development under Part 2 Class B as Crete Road West is an unclassified road.

4 Conclusion

- 4.1.1 The proposed development consists of the installation of a partially underground clean water storage asset, adjacent to an existing covered storage asset within Affinity Water's operational land.
- 4.1.2 It is submitted that the proposed development can be considered to be permitted development under Schedule 2 Class 13 Part A(g) of the Town and Country Planning General Permitted Development Order (as amended) 2015. This is supported by the argument that the land on which the proposed development would take place is operational land in accordance with the definition set out in sections 263 and 264 of the Town and Country Planning Act 1990.
- 4.1.3 As such, an application for a Certificate of Lawfulness for a Proposed Use or Development has been submitted by AWL to Folkestone and Hythe District Council and we respectfully request that the permitted development nature of the proposed development is formally confirmed.



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