

# AUDIO\_luton\_ish1\_session2\_26092023 (1080p)

Tue, Sep 26, 2023 4:02PM • 1:52:29

00:06

Welcome back, everyone, it's half past 11. So we'll resume the hearing.

00:13

Thank you, Miss Davis. Alright, moving on to requirements.

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And we're looking at and schedules one schedule to

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the first, I'm just having a quick look at

00:29

my agenda and looking at ways that we can get a bit of time. Mr. Owen, you've got your hand up.

00:37

Button. Thank you, Robin, for the historic authorities. I was just wondering with reference to the agenda, whether you are going to be dealing with the penultimate sub item after item three, which is any other articles to be included?

00:57

Think potentially, I was going to leave that to the end, just in case as a sweep up to because some of the conversations we may have may affect that. So you're okay. Okay. That's why yes, because I got something to say on that. But we can cover it at the end equally. Well, thank you. Okay. And equally, if we don't have the time, I'm happy for you to submit those in writing to us. And we can take them away and have a look at it. I think. I think as I've emphasized, at the start of this, this is very much a live document, the DCO. It will get changed and altered throughout the course of the examination. And they won't just be as a result of the conversations that we have in this hearing. It will also be as a result of the conversations we have in the issue specific hearings. And so again, new articles or new requirements or changes or amendments may arise as a result of discussions held there. So I've looked at schedule one, I did have some questions with regards to work. But I think I'm going to roll those over to a written question, because it's quite simple answer that I'm looking for. So I'm going to start with requirement one, which is interpretations and wanted to pick up a point here. As drafted, you currently have a definition for begin and commence. And I note that some requirements refer to begin and some commence seeing as both mean the carrying out of any material operation forming part or carried out for the purposes of the authorized development. The exception being that commence

carves out a number of effectively pre commencement works. Bearing this in mind and having read the explanatory memorandum memorandum, I'm still unclear as to why there is a need for the two definitions. So I'm going to seek some clarity from the applicant. First, is that to provide maybe a little bit more light as to why you feel the need to do different things.

02:46

And he madam must affinity RMS for the look and your right to know that there are separate definitions of begin and commence. The primary justification for those two separate definitions relates to a court judgment in the Swansea tidal lagoon case. And we have used the definition

03:11

or I should say we use the defined term for begin in some requirements to clarify when the relevant provision is engaged and will be satisfied without carrying out the full extent of works which are excluded from the definition of commands. So, begin is a broader term commends is a narrower term which excludes some works. So, the requirements have been drafted.

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Bearing in mind that distinction and ensuring there are appropriate controls in place for

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the relevant works. So, just to take two concrete examples, that time limits requirement uses the term begin, because in the applicants view, beginning the development that broader definition of carrying out material operation is sufficient to discharge the

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underlying rationale of that provision, which is to ensure that the development begins in a specified time period.

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An example of the term commence being used is in relation to some of the control documents which Mr. Henderson will be

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speaking to should you have any specific queries

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and in most cases, because we're seeking to control

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particular works.

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Ensuring that controls are in place in relation to them. The term commence is used, for example in relation to the environmental management plan required, which has to be based on the code of construction practice. So that's the short answer as to why there is a distinction

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Could the same outcome not be achieved by just using commence but carving out pre commencement works?

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Thank you, Madam miscibility Thermische for the applicant, you could achieve the same result. The reason we've gone with the approach that we have is because it is precedented. So two orders come to mind the ABL marine energy park development consent order, as well as the A 48 black Caxton where the distinct terms begin and commence are used and in line with Mr. Henderson's comments earlier this morning around having regard to

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the relevant departments drafting practice. That's what we've adopted in this case.

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And remind me when was the April Marine and the other consent made?

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April marine energy Park border was made in 2014. And the A 48 was made in 2022.

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Okay, thank you. Does Mr. Owen want to respond on any of the points just raised with regard to beginning commence?

06:09

Probably over the joint local authorities,

06:12

not on those points. We do have some points on some data requirements that use the term and we wonder whether that's the correct trigger, but not on that discussion. We don't have anything to add. Thank you.

06:23

Thank you. Does anyone else have anything to add? With regards to beginning comments?

06:29

No, then I'm going to move on to requirement two amendments to prove details. Just before I begin this sort of detailed discussions about requirements, I just want to reiterate the discussion today is on the drafting rather than the content. So for example, if there was a flooding requirement, I'm not proposing to talk about whether the mitigation proposed by the requirement is appropriate. It's just whether how it

will be secured and whether it's being secured in the right way. So please bear that in mind when we are talking about the requirements. So requirement to is amendment to approve details I'm gonna start off with a couple of simple drafting points to one provides a list of documents that the undertaker could apply to the relevant planning authority to amend the only thing that the undertaker couldn't apply to mend under this requirement appears to be the details related to green control growth requirements, which are in part three.

07:22

And this is obviously subject to the rider it would not give rise to any material new or materially different environmental effects in comparison with those reported and environmental statement. I do understand the need for some flexibility and acknowledge that the principle is such a requirement isn't unusual. However, the drafting on this particularly the use of word comparison, in my opinion, would not meet the test precision or enforceability.

07:48

How does the requirement as drafted ensured that the effects would not be materially new, different from those assessed? For example, I noticed similar wording and other projects like for Crosswell some form of assessment is needed and this could be included in the requirement that can speak to the applicant first.

08:12

Thanks, madam Tomlinson the applicant can you see yourself I think I'll camera was a bit slow in turning on the

08:19

eye. I can hear you can you hear me? So if you want to, if you want to continue?

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I think there's a bit of a lag on our, our network. So apologies for that.

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Man. We I mean, I guess the short answer here is we have adopted established drafting again, not wishing sad seems like a broken record. But we have

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withdrawn an established drafting for this provision. With regard to it. That's the answer to that comparison point which in our view has been accepted by the Secretary of State as as providing sufficient drafting precision.

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I mean, as regard to your point about

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providing information to enable that assessment to be made. I think that's something we understand and we'll we'll take that point away and consider whether we can,

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you know, there's there's value in adding anything to that particular provision to draw out how that process would work in more detail.

09:17

Okay, thank you.

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Does Mr. Owens respond on behalf of the joint authorities?

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Button. Thank you, Robbie Owens, the joint authorities. I think the only point I'd wish to make at this stage is it's a point that we've made in our submissions to date in a number of respects. It's the Diem discharge provision that would apply to applications for amendments to prove details made under this

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paragraph two of the shedule by virtue of the wording of paragraph 35 of the shedule In part five, which has the deeming provision in paragraph 35 to

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To

10:02

that, if there's not an active determination, then the discharging authority is taken to granted the application. And that is a matter of concern to the local authorities. And it's something we've raised. Thank you.

10:17

Thank you. Does anyone else want to raise anything on this point?

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I can see no hands up. So I'm going to move to requirements six, which is parameters of authorized development. And this is actually a no, it's not on the agenda here. But I just wanted to ask, following some further work done by the examining authority, how the work areas have been calculated, as when we've done some sense checking on some of these works based on other information submitted within the applicant application, there seems to be a disjunct between the two, with the work areas contained within normal climate six being in excess of those shown on plans. I just want to know what competence can the examining authority have that the details content contained within this requirement are correct?

11:06

Or does the applicant matter? We we don't involve our design expert with us this morning. So that's the point we'll need to take away. Is there any particular examples that you can

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indicate now that we could particularly interrogate? So I'm going to just pass you to my colleague, Miss Davis, who's going to give you one of our samples.

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So as an example, Work Number Four C 02, which relates to the fuel pipeline, and the above ground installation to the east of the site, the footprint of that count of that compounds about 460 meter squared.

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And then there's a section of pipeline and a road, which seems to cover an area of about 7000 meters squared. And when you add those two together, there's at least 1000 meters squared shortfall on what's in that requirements six table. So it's just it's not clear how you've come up with the numbers, while we're looking at for co2. To complicate things further, the company road, it is mentioned in the works number, but it isn't illustrated on the plans, but it is in the drawings

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where it doesn't run along the pipeline.

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As it's described, in the works numbers, it's actually taken off in a completely different direction unless you add that on your leg and get another 12,000 meter squared. So at the moment, we can't resolve where the numbers have come from for that work numbers. But I'm sure there'll be other examples as well. So we'd really appreciate it if you could go through in more detail and explain to us where they've come from.

12:48

You told me this. And, yes, we're gonna take that away and come back to provide the assurance that you need and will interrogate that when in particular. Thank you.

12:59

Thank you. So if we come to requirements seven notice of commencement of authorized development. There's been a bit of discussion about this already today with obviously the host authorities and Luton Borough Council highlighting the concern regarding the that 14 days is not sufficient, and it's in the grant of the applicant decide when work commences.

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I just want to raise it now more in relation to a potentially missing requirement. I know we're due to deal with them at the end. But I think it's just an appropriate time to raise it.

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It's just from a practical point of view. I mean, currently, there's no phasing requirements. And I'm not talking about a phase two requirement in terms of phase one A, what sort of phase one to eight and phase to be, and whether there needs to be a requirement included with regards to that in terms of limiting numbers of passengers and so forth. At this stage, what I'm talking about is there's many of the requirements refer to no part of the authorized development may commence until for that part, given the size of this application, and a period of time over which it will be constructed. In order in order to enable the relevant planning authorities the ability to keep track of what is meant to be built out when and whether the relevant requirements for that part have been discharged. I just want to ask the question, should there not be a phasing requirement which could provide this reference point? So if I can go first to the host authorities to see if this is something that I've picked up or would want?

14:45

Madam, thank you, Robin, for the host authorities. This is something that

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I think we would be better making some written submissions on than answering your question now, if we may.

14:59

Thank you. That's it.

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Problem, does the applicant want to make any comment on this?

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Tom Henderson's the applicant

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will put some detail in writing around our position on this, I think you've essentially outlined it, which is that we aren't, we are not seeking through the consent to bind ourselves to specific phases.

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That's

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a response to the fact that of course, the airport

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commercially, can only grow in line with with growing demand. And therefore, we're seeking the flexibility to be able to respond to that in terms of the works that are brought forward. And

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just a couple of points that I can draw to your attention. And within requirements,

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one

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subparagraph.

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Two, bear with me a second one, I call it up.

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We've We've

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there included a definition of what we mean by path, so construed as referenced to stages, phases, elements of the authorized development. So what's contemplated by the requirements is that

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at a point in time in which the undertaker is ready to implement an element of growth, it will determine which particular works which would constitute that that part of expansion, that particular part, or if you like phase that works, would form the basis of what's then applied to the local planning authority for approval. And the notification provision that we put in then supplements that by providing clarity about which elements we're taking forward, but we're not, we're not seeking at the outset, to specify what phases we would we would grow within because that's not something commercially that could be possible at this stage. And so we've been clear, hopefully, in the application, but we can articulate this in writing that the application includes assessment phases. For the purposes of understanding

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the Rochdale envelope, that's not something that we're seeking to bind ourselves to in the

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in the consent itself. And there's there's further information in the code of construction practice around facing, but I suggest we, we put together a short note in our written submissions that deadline, three weeks explains opposition. And maybe I can just take the opportunity to maybe be a bit more clear. And what I'm explaining it for I potentially come back from the point of having at some point having to discharge requirements for very large applications. And

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whilst we're all very familiar with the documents, and we're all on top of what's where and what's happening when what needs to be discharged, for for which bit, at some point down the line, maybe in 510 years time and somebody gets something in what is to enable them a clearer tracking of what needs to be discharged. And when it needs to be discharged, so that when he when you say this part of the development, it's you know, it's clear that you know, the the landscaping scheme for this, you need a



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noise Mitigation Scheme for this, you need a Flood Mitigation Scheme for this. So it's more from the practical point of view of doing Bar Council or one of the host authorities who is having to discharge conditions further down the line, how they manage to know which, rather than just a generic use of part is that, you know, part one will be the roadworks and then they can tick off that they've done everything there. So it's more coming at it from that perspective. So just trying to enable the requirements to be managed properly, because obviously, at the end of the day, if the application is granted, and it's subject to these requirements, they're needed to mitigate. And we need to make sure that everyone knows what needs to be done to get the job done. So that was where it's coming from. So if I can just come back to the issue with 14 days it has been touched on

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at various points don't if there's anything further, Mr. owner wants to add with regards to this requirement that he that hasn't already been said this morning, because I know that obviously there is a concern has been raised that this period of time is too short.

19:01

Thank you, Madam Robin for the

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typos local authorities have nothing more to say on that right now. It is something we may return to in written submissions, though. Thank you. Thank you. So then can move on to requirement age eight, which is the code of construction practice.

19:18

From a simple drafting perspective, this requirement would appear to be a little bit back to front but I can understand the current wording. I just want to move on to the drafting first. And this is the first appearance of substantially in accordance with which appears in a number of requirements. Can you explain to me how this meets the tests with precision and enforceability and why it is in fact needed when you have the ability to mend the code of construction practice for example, under requirement to

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question for the applicant.

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Thank you, Madam

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just bear with me. Will I turn up my notes on this point?

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I'm suspecting that you would, you would be asking if.

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Thank you for that. So comments of the applicants.

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I mean, our position on substantially in accordance is that we we consider it to be sufficiently clear and precise. And its usage in a number of other DC O's supports that conclusion. And we can provide some examples of that. But just one offhand would be the a four to eight blackcat DCO, which is my colleague, Mr. T. Farish mentioned was, was consented last year.

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And we think it's necessary and appropriate in the context of this DCO. Because the term in our view is appropriate aligned to

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outline management plans contained with an application, which then required to be developed and approved in detail at the delivery stage. And therefore, the term substantially accordance with allows an acceptable degree of flexibility for that final plan to be developed in due course, substantially in accordance with the outline, but not fully in accordance with the outline because of course, detail may emerge, and it may be fleshed out at that stage. Now, I think it's worth saying at this juncture as well, that we've noted your questions reviewed opposition across the full suite of requirements. And we do have a number of control documents, which if you'd like are applied for as final. One of those is, in fact, that kind of construction practice. So that's not an outline document, what we are saying in our application is that we give this DCO is made that cicp is approved at the point of a decision as the final plan nap principle applies to a couple other plans, the cultural heritage management plan and the fixed noise plant management plan. Now, on those occasions, but we're happy to revisit the draft and in the case of those three documents, because we recognize there that it may be appropriate to tighten up the language to in accordance with so that we would have therefore a consistent position as between outlining plans which are subject to the phrase substantially in accordance with the reasons I've said, and finished plans if you'd like which the commitment would be to develop in accordance with those. So that's the point that I think sits with us to take away and consider the deadline three. But that's the overarching kind of logic behind the approach we've taken.

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I understand what you said, and but again, with regards to the fact that here, you got requirement to which also enables you to amend the code of construction practice, as long as that's does not give rise to any material new or materially different environmental effects. So why is there the need, if you've got the ability to amend the code of construction practice to to to also have the flexibility in this requirement?

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Well, you start with exactly the point that I'm talking about. We recognize that

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the existence of particle two provides that flexibility, and that's one example where we can we can certainly look to revisit drafting. So that's, that's in essence, what I was pointing to for deadlines. Thank

you. If I could go to Mr. Owen. So anything that the host authorities wants to say on this issue is to step substantially in accordance with and obviously the specifics for the requirement to will climate aid with regard to the code of construction practice? Yes, thank you, Madam Robinson for the five host local authorities.

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The local authorities do not agree to the current wording in requirement eight one that is the reference to substantially accordance with

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as Mr. Henderson has said, the credit destruction practice is not an outline document is intended to be approved if the DCO is made, and therefore,

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it should be secured fully. And I therefore welcome what was the Henderson has said that the wording

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will be reviewed in our view, requirement eight one should provide that the authorized development must be carried out in accordance with for the reason that it is not an outline document. And also for the reason as you've said, Madam that Article Two or other paragraph two of the sheduled would allow the applicant to seek a variation of the coexpression practice if that is needed in due course. It's also important to point out that the

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paragraph eight one doesn't just relate to the categorization practice but also the plans approved under and pursuant to subparagraph. Two and again, as and when those plans are approved. They should then be secured probably properly by

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paragraph eight one, referring to in accordance with not substantially in accordance with. And we actually don't think that the four to eight blackcap to Caxton gibbet development consent order is a comparator here because that uses a different approach of an environmental management plan, which is a more more of an outline document, which then spawns more detailed documents later. So

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we all I can say in conclusion is we would very much encourage the applicant to change articulate one just to refer to in accordance with and then we will be content with the wording. Of course, the contents of the construction practice itself is another matter which we'll be covering in other hearings this week. But so my comment is just on this requirement right now. And if that one word would be deleted, then that would be what the council's would want. Thank you.

25:55

Yep, applicant want to respond with Can I move on to my next point?

26:00

Give me more. Thanks.

26:03

Okay, so the next one is just a certain question I just would like to have some clarification on. So at the moment, the plans would be discharged, and as phrase by the relevant planning authority in consultation with the relevant Highway Authority. And as I mentioned earlier, I note the definition of these have been expanded in the latest version of the DCO to the highway or planning authority area to which the provision relates, but I'm just a little unclear how this is all going to work with the documents such as the coda contract structure and practice, which affects a number of planning authorities.

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Mr. Basler, I'll come to you in a minute. So just on the question there, how would this work if you're having to get this cleared by a number of planning authorities? Would it be submitted to each individual one?

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Song and as the applicant? I think Liz has managed to explain how we anticipate this provision of applying. We've adopted the phrases as you say,

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relevant planning authority and relevant Highway Authority in line with with premise entities Yes, and our reading of that

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is that that term applies to the authority within whom the works are taking place. So for the purposes of

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the kind of construction practice which which incidentally could be developed in parts or different parts of the development, so wouldn't necessarily sorry, the the plans under the cicp could be could be developed in park

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opposition is that the relevant planning authority for those works is the authority within whom values boundary those works are taking place. So airport works for instance, structure of airport works taking place within the borough of Luton, rather than planning authority would be leaking very Council. We know that we have certain works that take place in other authority areas. So for instance, we have works in to the highways in central Bedfordshire. We have works to week more Valley Park in North opportune Hartfordshire Council.

28:01

And so in connection with those particular works, which extend to their authority areas, they would then become a relevant planning authority. So it would depend on the particular suite of works that were

being undertaken within a part of the scheme. But the relevant planning authority for that document would be the authority and whose boundary those works to take place.

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Thank you. And I suppose Sorry, just as a final point, we think that's,

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you know, aligns with the standard interpretation of this provision across the VCOs. And in passing would note that, you know, if this was a major scheme under the Town and Country Planning Act,

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Luton Borough Council would be the host authority for that scheme and would be the body that considered reserved matters under unrelaxed application. So we think there's consistency there. Thank you.

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Mr. Basler. You put your hand up.

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Thank you, madam.

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Howard. bassford, DLA Piper for national highways. We have a comment in relation to this. And also in relation to requirement 14 Where there is reference to the relevant Highway Authority, we wouldn't want there to be a question as to whether national highways was the relevant Highway Authority, because that's not necessarily restricted just to the question of works. So it's not just a question of if works are being done on our network. It is about whether traffic is generated on our network. Now, that's relatively straightforwardly addressed by simply naming national highways. But in this perhaps for others in relation to other highway authorities or it would be asked if the same device was used as as in the drafting at present, it might be difficult to determine whether a highway authority will say relevant highway authority without some debate. So I think it's it's better to have a hard obligation to consult

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named parties than a,

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to have a

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sort of interpretive approach such as we have at present.

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I think you've effectively asked my next question, because my next question was going to be should any of the organizations or bodies be included in the list of consultees, for example, national highways, or the Environment Agency? So I'm just going to ask

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the joint host authorities, first of all, whether or not in their opinion, there should be more than just the relevant Highway Authority and the reference relevant planning authority listed in discharging this requirement. So obviously, bearing in mind, how the applicant set out, they envisage these works coming forward to be cleared. Mr. Owen,

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Robbie, oh, and thank you, for the host local authorities. That is something I will need to discuss with with the local authorities, it may be that they feel that there should be certainly a provision for them to consult, as you say, the likes of Natural England or the government agency before approving any plans under this provision. So we can confirm that. The point I also wanted to make that if I may, at this stage is

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hearing what Mr. Henderson said, I think the applicant is seeking to retain flexibility and that some of the plans that will be submitted for approval under eight two will be across the whole project, some maybe specific to particular works. And I think it'd be helpful to hear from the applicant, perhaps in writing a deadline three, which the plans in the list a to J, they think would be across the whole breadth of the development, and which would be or could be site specific, because I think it's a relevant issue for

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yourselves as the only authority but also the local authorities to understand because it may make sense for some of those plans to be only to be capable of being across the whole development, as opposed to being

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chopped up into different plans for different elements of it. And I think it'd be helpful to understand from the applicant, what the, what the thinking is here. Okay, I think so. But if you could also say, I think there's two action points coming out of this, if you could come back and say whether or not the discharge of this condition should be in consultation with any other outside bodies, and host authorities.

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And if the applicant could have a look at the list contained with it, highlight those which would be across the whole development and those that would be individually specific to a phase. And then once we've got that information, then look at how potentially this requirement may need to be redrafted. Is everyone happy with that as a way forward? Mr. Own festival? Yes, sir. Happy with that, madam. Thank you, the applicant, would you happy with that as a way forward?

33:11

To the applicant, we are by them, I think it's important to say that these plans relate to the construction of a part of the scheme. And so they are engaged by whatever parks is under construction. And as we've said, the order provides some flexibility in that regard. But for instance, if if one part of the scheme was to undertake

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works within the order to to upgrade junction 10 of the EM one those fall outside of Luton Borough Council, different relevant planning authority, we've engaged central beds, those relevant plans board attached to that part of the development and the construction of it. And just in response to Mr. Baskets point, we've and we specifically changed the definition of

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the relevant highway authorities you relate to the highway to which the works are engaged in therefore that would obviously bring national highways within the scope of that definition for works to the M one. We also know that we are actively progressing protective provisions with national highway so we anticipate in further assurances that can be provided to national highways on that point. But

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yeah, just wanted to say we're not overlooking national highways, his role and function as a relevant authority.

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Okay, thank you.

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Mr. Bassel. Did you have your hand up, but I'm assuming that you've taken it down because you've heard response that you wanted to specify it?

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I've heard a sufficient response for me to make a written submission. Thank you.

34:42

Alright.

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I'd like to pick up the pace a bit because I do want to spend some time talking about gun control growth. So requirements 16 I'm going to roll over to a written question because it's actually just a fairly technical question that I had with regards to requirement 26 Which I do think we need to just dwell on here as

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To set out at the beginning of this issue specific hearing, the purpose here is to look at drafting at this stage and not whether the cap self is appropriate.

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On this basis, why is it necessary? This is a question for the applicant to include the words without prejudice to in this drafting.

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Thank you. Neither admissibility RMS, for the in the use of the phrase without prejudice to the provisions of the order is to make clear that it takes effect subject to the controls. So we didn't want for example, paragraph 26 to be read in isolation, and use as a basis for saying, Oh, well, we can go to 32 million, whether or not GCG, green controlled growth applies or not. So it's just seeking to ensure that the relevant controls are also secured. And that it's not a free wielding power to unconstrained our to go to 32 million passengers. Brent. Thank you for that clarification. And then I just like to know, why is the phrase authorized development use here, rather than the airport as is unused in requirement 27. Given the authorized development is defined as the work set out in a DCO, it could be argued that authorized development would not include large chunks of the current airport. So in terms of precision and impossibility perspective, what should be the correct face phrase?

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That Thank you, Madam, we've we've heard what you've said. And we we understand that point. And we propose to look at that and come back to in writing on that.

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Thank you.

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I wasn't proposing to ask any more clarification comment, questions, just comment 26. So no one else has any questions. Mr. Owen.

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Thank you, Robin, for the joint most local authorities, just to reach a point between article 26 and 27, is that I think

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we've got the heading of Article of requirement 26 referring to the authorized development, and yet, then the wording of requirement 26 refers to the airport comprised in the authorized development. And then in relation to requirement 27. It just refers to the airport. So could I,

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through you ask the applicant to consider

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the drafting of the two requirements together in in relation to the use of the phrase the airport comprising the various development and the airport and whether in fact, there's a difference between the two? I'm not sure there is or intended to be.

37:43



Yeah, thank you. Afternoon. Take that away. I'd appreciate that and provide a written response along with the other written response for that question, satellite.

37:51

Scoring

37:54

requirement 27. We've touched on this actually earlier today with regards to the fact that obviously, the current like quota cap is a lot tighter than is currently proposed here. The condition on the current planning permission also includes, for example, restriction of movements greater than QC two at night. It has ATM movement caps, a reduced noise contract cetera.

38:21

I was therefore, that's already been highlighted, and I think will be dealt with in the questions that I asked earlier with regards to what conditions should possibly come over from the existing planning permissions. But just in terms of drafting this article, sorry, this requirement includes a tailpiece that would allow this to be varied by the relevant planning authority, subject to it not giving rise to any material in new or materially different environmental effects. In comparison with those reported in the environmental statement, the under could take could only apply for this if he consulted environmental scrutiny group. Given that as worded, the airport could operate under this cap without having to vary the condition. The only reason to apply to vote would be to increase the number of nightlights given the concerns we have regarding night flights, why should there be an ability to vary nightlights without having to go through a formal process of applying to various requirements which would ensure transparency?

39:22

Thank you not a missed ability for AirMesh for the applicant. The short

39:29

summary of of opposition is essentially that because it's limited to the scope of the environmental assessment through that wording. It is appropriate to be able to vary it and what that provides comfort for is that those concerns that you've alluded to

39:46

are catered for in the sense that anything that leads to environmentally adverse impacts beyond those in the years would not be permitted.

39:58

Thank you, Mr. RNGs.

40:00

The host authorities.

40:04

Madam Robin, for those local authorities, not at this stage known. Thank you.

40:09

Does anyone else contributing on this point? Mr. Lamborn?

40:14

Thank you, Madam manager level of ladder care. This certainly causes concern in the way that it's drafted on off communities.

40:23

Our understanding from the preceding documentation was that this cap was being carried forward without any conditions. As a fixed limit.

40:35

It is clear obviously, that a an application to vary by an amount convenient to the airport operator or the airport owner, might be regarded as a salami slice that may have apparently limited environmental impacts. But I think the principle here was absolutely clear from the start. But this limit would be respected and had here too. So we're not obviously happy to see a provision for it to be varied

41:04

under any circumstances, because even if it were to go through a planning application, it could still appear as a relatively small impact in noise count or terms, but obviously not in aircraft movement terms. Thank you.

41:23

Thank you, just the applicant will respond.

41:27

Thank you, man. Yes, very briefly, I think the important to emphasize here is that what paragraph 27 doesn't do is override green controlled growth. Again, we're going to be getting on to the substance of that, but that provides

41:43

an enhanced regime for controlling environmental impacts. And the only other points that we would make is that it has to be borne in mind that these provisions will apply over the long term operational period of the airport. And so having some flexibility, which is appropriately confined to the environmental envelope that we've assessed is considered appropriate. And again, I just emphasized there is a requirement for consultation as well as approval. So this is not a unilateral ability to vary that control in paragraph 27.

42:21

Okay, again, because I'd like to spend some time to discussing green control growth requirement 28. Looking at this, I can roll this over to a written question, as is requirement 38. And requirement 39. Unless there's anything anyone specifically wants to raise orally now.

42:38

My question is, could potentially be answered in writing.

42:44

As I've got no hands up, I'm assuming that's a good way forward. So I'm just going to briefly talk about the agenda first, whether there's any missing requirements. Having given this further consideration, I feel that this would probably be more appropriate to scoop up in written questions after we've held the rest of the issue specific hearings, as an examining the evidence in those hearings, this may throughout the need for additional requirements are not currently listed, and feel it would be more appropriate that we then look at it at the end of the week in a kind of review, if having reviewed the current drafting of the DCO, if any interested parties considered that there are requirements that are currently not included, but that you think should be Can I ask that as an action point, this meeting, you submit those with if possible, and he suggested drafting at deadline three people happy to move to look at it in that context.

43:37

Assuming from the silence that we are, so I'm going to move on to requirements 18 to 25, which is green controlled growth. My colleague, Dr. Hunt is going to be helping with this questioning. So just to set the context for the next section of the agenda. Green control. Green controlled growth is the key tool by which the applicant proposes to manage mitigate the effects of the proposed development. As a result, it is a golden thread that runs through the whole application. Consequently, we will be talking about green control growth from various different angles throughout this week's hearings. In this sense, in this session, we will not be looking at whether the threshold levels are appropriate. Instead, we will be focusing on whether the requirements as drafted would secure the green control, green controlled growth as envisaged. We recognize that there are maybe some need to go into some of this data in this session, but would ask that you try and focus the responses and discussion on the aspects of drafting. There will be other opportunities later in the week to talk about these things like the appropriateness of the various thresholds at the other issue specific hearings. So bearing that in mind, I'm just very briefly going to ask the applicant to take the opportunity to walk us through the proposals for green control growth. So if I can pass over to Mr. Henson or miscibility facility, this is another Thank you. Thank you, Madam Mr. vincey AirMesh

45:00

For the applicant,

45:02

as you've alluded to, we prepared just a brief explanation of the overarching framework of green controlled growth or GCG.

45:12

Ensure the applicant recognizes the importance of environmental limits being managed. It is the applicant's view, that this approach that's being proposed is breaking ground for the management of environmental effects not just for airports, but for any nationally significant infrastructure projects to

date. In essence, GCG will ensure a proactive approach to managing environmental effects to ensure they're secured

45:39

in four key areas noise, air quality, surface access, and greenhouse gas emissions. The limits that are secured are set by reference to the environmental statement. It differs from conventional mitigation in that it goes beyond what is embedded and fixed at the point of the DCO application. Instead, it supplements the embedded mitigation

46:05

by laying out a framework for ensuring escalating and an escalating and preemptive process to monitor, manage, and then mitigate those impacts to ensure that the set limits are not breached. The process was innovated in response to requests from stakeholders that environmental protections should be more ambitious. And it's really it's reinforced by substantive element to substantive elements independent scrutiny, which provides a carrot to enable proactive mitigation and restrictive sticks to incentivize the production of plans that meet those outcomes. To get to the substance of the provisions and how they work in practice, paragraph 20 of scheduled. Two requires the establishment of an environmental scrutiny group ESG no later than 56 days prior to the date of submission, the submission of the first monitoring reports, which is required under paragraph 21. As part of that environmental scrutiny group, there will be technical panels, which will provide technical support to the independent environment environmental scrutiny group, the membership of the ESG. That environmental scrutiny group includes a number of local authorities, as well as two independent members approved independently by the Secretary of State. The membership is designed to balance the need to capture a diversity of views, the relevance of those views to the impacts that are forecast to arise and the need for the membership of the ESG to be focused in supporting this, its decision making role in the interests of managing

47:49

the cost associated with administering the Administering GCG. So requirements 21, which is the paragraph I mentioned earlier, requires an annual monitoring report to be provided to the ESG concerning the operation of the airport, in accordance with the monitoring.

48:12

Sorry, the outline monitoring report, which sets out how the impacts will be monitored in relation to those areas I mentioned earlier. So air quality noise, greenhouse gas emissions and surface access.

48:25

You've touched on the definitions of these limits. But the other relevant definitions are not just the term limit, but level one threshold and level two threshold.

48:37

Requirements 22 sets out what the lowest level concerned that's a level one threshold triggers in terms of the actions of the operator. So if the monitoring report finds that a level one threshold has been exceeded, the undertaking must include commentary on how it will avoid the exceedance of a limit. In

effect, this acts as an early warning to the breach to the potential breach of the limit requirements 23 relates to the level two threshold and what it requires is a level two plan in the event that a level two threshold is breached.

49:18

That level two plan is then submitted to the ESG for approval, and it must set out the steps that are required as well as the actions to avoid or prevent the exceedance of a limit. Importantly, there is a stick in this provision, which prevents further increases in capacity of the airport until a level two plan has been approved by the ESG.

49:47

Requirement. 24 deals with the breach of a limit and that provides again where a monitoring report shows a limit has been breached. Then the operator is required to prepare the mitigation

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Plan setting out out

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the exceedance beyond the limit will be managed and what actions are taken to ensure it is brought back down below that limit. As soon as reasonably practicable. The Undertaker has to have regard to any representations made by the ESG on a draft plan during the consultation period. And again, there is another stick in this provision.

50:28

There is not just only the requirement that there is no increase in the declared capacity.

50:34

But the total number of allocated slots must not exceed the existing number of allocated slots until the impact is brought back down below the relevant limit. This is different from the previous stick I described as it requires measures within the terms of an extant capacity declaration and not just preventing future increases. In addition, if a mitigation plan fails, there is a requirement to reduce a further mitigation plan, which must identify whether the application of a local rule for the purposes of the slots regulations

51:14

could be implemented to reduce the number of existing allocating slots to avoid the continued exceedance of the limits.

51:24

Requirement. 25 deals with the review of the implementation of the GCG framework generally. And the intention here is really acknowledging that this is

51:37

groundbreaking in an innovative, innovative process. It is only right that we review how it's functioned in practice to identify measures which could be implemented to improve its efficiency and operation.

51:52

That's all I had by way of setting out the overarching framework of GCG.

51:59

Thank you very much. That was a very concise overview, and I appreciate you giving it to us. Um, I did have a couple of questions with regards to court requirement 18 In terms of technical drafting, and I'm actually going to roll those over to written questions. And I'm now going to pass over to my colleague, Dr. Hunt, he's going to lead some questions on this part of the agenda.

52:20

Thank you, Miss darling.

52:22

We've already considered article 44. One, which lands operation under the DCO redundancy of the looting, planning permission and removal of flight camps immediately on serving notice.

52:34

Requirements 18 four states at the level two threshold and limits don't have effect until after the remainder of the calendar year after the notice under Article 44. One is served on the relevant local planning authority and the subsequent calendar year the transition period has elapsed. Can I confirm then if hypothetically a notice was served on say the first of January 2025. The first full calendar year after would be 2026. And the monitoring report would then not need to be submitted until 31st of July 2027. Or got the numbers wrong? And is the submission date actually 31st of July 2026.

53:17

Thank you, sir. Mr. Latif AirMesh for the applicant. I think I followed the data we're using. But it's the latter of the two that you mentioned.

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So it's a year and a half period effectively from

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the notice being served.

53:37

So it because the periods are lined up with established

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monitoring periods, it would then be the later date that you mentioned. So it wouldn't necessarily fall on the July would depend on when the notice was served for calendar year, and then following that the first reporting period.

54:00

So sorry, to labor this point. So it's, it's a year plus half a year,

54:07

not two years, plus half a year based on that current.

54:14

Okay, so within that period, there's potential to have up to three capacity declarations if my understanding is correct.

54:26

The capacity declarations made twice a year. So yes, over a year and a half, there would be

54:32

three controlling the future periods prospectively. Okay. So in that case, there's potential to theoretically substantially increase slots during that period of year and a half without any form of control being in place. Is that correct?

54:54

The requirements of the green controlled framework specifically if

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You look at

55:02

sub paragraph,

55:05

or which you refer to Sir, what they apply to is the exceedance of a level two threshold, and the exceedance of a limit, certainly other provisions relating to GCG. So that's the level one, as well as the

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monitoring requirements would apply in the transitional period.

55:32

Okay, so we have,

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we have the monitoring requirements within that transitional period.

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Monitoring then triggers, potentially the need for some form of mitigation plan to be put in place. So we have the the year and a half before the

55:52

the first monitoring report is produced. And then if that identifies that there's an issue there is then a further period of time, before any corrective action is put in place. Is that correct?

56:05

That's correct, insofar as it's a breach of a limit and a level T threshold, because those do not apply, as currently drafted in the transitional period that we are discussing.

56:20

Okay, so I suppose what I'm concerned about in the current wording of the DTO, is that there is a period of time where effectively whilst there is green controlled growth, as a control in existence, really all that is happening during that period of a year and a half is monitoring.

56:37

And no actual ability to take any action or mitigate any issues that arise during that period can occur is, is that correct?

56:50

Thank you. So I think it's important to say that the ability to release capacity is governed by the slots regulations that we that we mentioned earlier. So notwithstanding the the specific provisions that we've spoken about in terms of the mitigation plan, and the level two plan would not apply in the transitional period, the slot allocations process

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takes place, as I mentioned twice a year for the following summer and winter seasons. And that sets out the maximum capacity.

57:22

There is

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a roof in effect, when you're implementing those provisions, it's not possible to have a sudden, maximum increase in capacity, for example, on day one, you wouldn't be able to do 32 million passengers per annum.

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In practice, the operator will only declare capacity that's aligned with the physical capacity that is in place

57:48

at the airport, as otherwise, there's a risk that the airport will not be able to physically accommodate the number of scheduled movements, it's also important to know that demand is not directly linked to capacity in in the even if the maximum possible amount of new capacity is immediately declared, the



uptake of that capacity would not necessarily be immediate, because it takes time for the slots process to play out and people to take up those slots. So the circumstance, I think the scenario that you're seeking to play out, in practice, there are constraints involved in how we'd actually come to fruition. And if it helps the the basis for that transitional period is is seeking to acknowledge that some of the structures around GCG, including the assumption of the ESG, the environmental scrutiny group, as well as the monitoring may may take some time to put in place. So the basis is to is to

58:48

acknowledge this is a new, innovative way of trying to do things

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to help things get started up. But I think just on the specific scenario, you're raising, there are some constraints in place, which will avoid the scenario playing out in the way that you've set down

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in terms of the physical limitations on increases, so what is the maximum theoretical

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number of flights that could increase during that period of time? You have any ability to comment on that? So

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if there is this period of year and a half, where there could be several capacity declarations and increases in flight numbers during that period?

59:34

What is the physical constraint? What is the absolute limit during that period over the over the current capacity?

59:42

Thank you, sir. What I'd quite like to do is invite my colleague Mark de to give some commentary around this issue. He's He's joining us virtually his is not in the physical room with us. So I'm just speaking while he manages to turn the screen on.

59:59

You

1:00:00

Thank you, Mr. Steve Hermitian. Good afternoon. So in relation to the specific question about the number of flights that could be declared in terms of an increase in capacity on day one, I'm afraid that's not a piece of information that I have to hand. And I think we've mentioned before, we don't have our sort of design team in the room with us, that might be something we need to come back to you on writing on if that's okay.

1:00:21

Yeah, that'd be helpful. Thank you.

1:00:36

Very much. Mr. Lamborn has hand up.

1:00:47

You're on mute Mr. Lamb on

1:00:51

your you're on mute. Sorry.

1:00:54

Andrew Lambo and Fallout again, sorry about that.

1:00:58

Dr. Hunter touched on a very important point, if we were going to raise in any case, that this transition period is of significant concern. Because, in fact, if you work it from an August, being the time when permission is granted, and you could have even more than a year and a half. And we as we have indicated in submissions already suspect that there may be a situation in which too many slots have already been issued to operate the airport within current limits. It is our understanding that the runway and terminal potentially could allow for something approaching 21 and a half million passengers as things currently stand. So there is a risk. And notwithstanding what Mr. Atif RMS said earlier, we don't see anything particularly groundbreaking in green control growth in any case, simply

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articulating the prudent means that anybody ought to be putting in place when operating a development against fixed limits, which is that you start to bring alarm bells, if you're getting close to them and you take corrective action. It seems to in fact fail in some respects because it allows for those limits to be exceeded anyway. So I think this is an area where we are gravely concerned and would much appreciate tighter drafting and

1:02:30

examination of this transition period. Thank you.

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Thank you, Mr. Lamborn with the handwritten lights come back on that.

1:02:42

Thank you, sir. Mr. Latif AirMesh for the applicant.

1:02:47

We don't agree with the position that Mr. Lamborn has outlined. But again, we have heard the question that you've asked, and what we propose to do is set out how in a transitional period,

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the constraints on in the context of the slots regulations would work to avoid the scenario that you you've laid out. We are we are considering

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the position more generally in response to a number of comments. So I think that might be the best medium is to is to provide you with that information or opposition in writing.

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I think that'd be helpful. Thank you.

1:03:23

And I note that Mr. Bassett has a hand up but if I could just go to the joint counsels first to see if they have any views to offer.

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Sir,

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thank you, Dr. Hunt Robin for the

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joint local authorities

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in relation to green control growth as a whole. As y'all know, the council's raised a number of queries and concerns on part three of schedule two to the draft DCO in their local impact reports. I refer for example to nine point 1.44 onwards of the Hartfordshire local impact report.

1:04:10

Because of the sort of innovative nature of the GCG framework in planning control terms, and because of the critical nature of it for controlling the effects of the development of the operation of the airport as a whole, you will appreciate that the council's overriding request was further engagement with the applicant on this. And we do acknowledge that meetings have recently started to be arranged which we welcome. And

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we also note the helpful responses that the applicant has provided to the queries and concerns raised in the IRS on these requirements. But there's there is still a huge amount of work to be done and the applicant is arranging further meetings.

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For the first part of

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October. And

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therefore, in the meantime, I think unlike

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other requirements in schedule to where it is possible to make sensible comments on the drafting of the requirements,

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separately from

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us considering and commenting on the matter being secured. So for example, the conversation we have recently about the code extraction practice, I think we do feel in relation to part three, that it's, it's, it needs to be the other way around, really, we, the council's need to be comfortable with them, we're not yet comfortable with the green controlled growth framework documentation before we can then really turn to these requirements. Otherwise, we are completely commenting on the draft requirements in a vacuum. So

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I think that's all I can really say at this moment in time, it's been a helpful discussion, we will consider what's been said about the the sort of phasing in point the transitional period. But we do reserve our position fully in relation to the drafting of the requirements, which are critical to give full effect to the green controlled growth framework. Thank you. Thank you. And do you in terms of the ongoing discussions with the applicant? Is there likely to be any output from those discussions in the coming weeks?

1:06:29

I imagine there will be, Dr. Hahn. But I can't say with precision because the meeting is happening. It happened. I think the intention, certainly on the part of the applicant, and they may work want to comment on this is that the meeting, there's a series of meetings being arranged for early mid October, with a view to the output being fed back into the examination timetable at the end of October in slash early November. Obviously we understand that's important.

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So the discussion is being held, obviously for that, that put that purpose as well as

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the purpose of helping the joint local authorities to get comfortable with the green control growth framework in the range of requirements. And I I emphasize that

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whilst we understand where the concept of green control growth has come from,

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this is the first time in a developed consent order that it's been dealt with. And you've got as your as you'll see some very detailed draft requirements that will require very careful scrutiny. But we're not yet ready to do that, because we haven't had the full discussions on the technical side first, which we think do needs to come first.

1:07:37

The points are understood in Australian Thank you. We will continue to discuss from the detail of the drafting over the course of the next

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part of the session.

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With the does the applicant wish to come back otherwise, I would hand over to Mr. bassford.

1:07:56

Thank you. So just just very briefly, we're grateful for Mr. Owens comments as he's noted, we've we've been having

1:08:03

meetings to discuss the comments raised by the host authorities. We met with Mr. Onur yesterday, and there is a further meeting planned for the first week of October. The detailed comments that have been provided to date in the local impacts reports. We responded to in in rep one zero to one, but just just to give you some assurance where we're hopeful that the discussions that are planned in the meetings that are proposed will will provide the comfort and assurance that the Postal authorities are seeking on being controlled growth.

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Thank you, Mr. Mansfield, you've been waiting patiently with your hand up if I can ask you to come on.

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Thank you, sir bass for DLA Piper for national highways most I'd like me to wait patiently

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the couple of points I'd like to make here. First, the use of slots as a means of governing the

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environmental impact of the airport is

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a difficult one, because the slots will effectively become a property of the airlines. And so there has to be some real care and how that's how that is managed. And whether that is in fact a suitable means of controlling environmental impacts. Now we'll have a look at that. Because it may well be that it is a very blunt instrument from that point of view, particularly given the durations that we've been discussing. The so for instance, if it was decided that slots would be released, there's an issue then it transpires that you have to restrict the number of slots, achieving that's quite difficult.

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The next thing to say is that the ESG has been set up to represent the views of a variety of

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stakeholders now one of the four key areas that is of importance there is of course surface access, which is

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a dog that my client has in this fight.

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And

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it's notable that whilst there's a range of views being taken, national highways, custodian V strategic road network has not been included in that

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in that group, and I would have thought that it's important that national highways have a voice there. So I think there are a couple of points really first need to consider whether the involvement and subject matters is appropriate. And secondly, to consider whether the means of managing impacts is in fact, appropriate as well.

1:10:49

Thank you, Mr. Bassett. I think slot is a matter that we're likely to come back to, in the issue specific hearing three on noise. So perhaps we won't dwell on that. For the meantime, in terms of the membership of ESG, would the applicant like to comment on national highways attendance at ESG?

1:11:11

Thank you so much for Alexey very much for the applicant. You'll have heard me earlier say that the ESG is supported by technical panels to support the work of the ESG. And it is proposed that the surface access technical panel has national highways, for the reasons I explained earlier. In looking at the scope of the impacts, ensuring the diversity of views, the membership of the ESG has been

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defined to include those relevant local authorities. But we acknowledge the roles of parties like national highways, where there is a particular interest, for example, in certain success. So that's why they have

a position on the technical panel, but not the ESG. But just to confirm that there is a specified role for national highways in the GCG. Framework.

1:12:02

Thank you, Mr. Bassford.

1:12:08

Password for national highways. It's all very well being involved in the technical groups. But this relates to impact potentially on strategic road network. And one would have thought that national highways ought to be mastering its own destiny there rather than having

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a panel from the ESG

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take decisions over its head. And that that is what effectively stability power measures suggesting that there's a there is a technical panel where we get to make our views known. But if we don't agree and everybody else thinks it's a jolly good idea to go ahead, national highways gets gets overwritten. That's not really appropriate.

1:12:57

Okay, thank you. Just to be clear, we're dealing with matters of public safety here. This isn't a matter of

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nice to have.

1:13:08

Thank you. I'll ask the applicants convert briefly, but don't get bogged down in this point. And I'd rather know it's fully understood. Thank you taken away and and agreements that are brought back at the next session.

1:13:21

Mr. Lucey?

1:13:25

Thank you, sir. We'll be brief because hearing what you said that there's there's two points to note. One is that we just draw your attention to paragraphs 29 and 30 of sheduled. Two, which relate to mitigations proposed outside of the green controlled growth framework. And in those contexts, the the relevant Highway Authority, which as we discussed earlier, includes national highways is is included GCG whilst it provides for the ongoing monitoring and management of environmental impacts and impacts rating surface access, it's not the only mechanism which we're using to ensure adequate public transport mitigations are in place. So I think Mr. Bassett has comments to a large extent applies paragraphs 29 and 30, rather than the operation of GCG. And again, as Mr. Henderson mentioned earlier,

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we are in discussions with national highways about appropriate protective provisions, which again, we hope to be able to provide an update on in the forthcoming deadlines

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Okay, thank you Mr. Bassett. I'd rather park this one was a new point just been raised by Mr. Latif AirMesh that I need to address. Very briefly, Mr. Bassett. Just to say that,

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that requirement 29 is not a solution here, because there's a provision there for for monitoring plans and so forth, and that those have to be delivered. Now. That's all

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very well, but what if there's no money? Or they just choose not to do it? Now, that's, that's a real issue. If you find yourself in a position, such as the aviation industry has been in the last few years, have to be absolutely clear that there are proper negative controls on what's going on and requirement 29. And the ESG approach and the green controlled growth approach simply just simply do not do that at present.

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Thank you. It's an action. Mr. bassford. Would it be possible for you to have a separate conversation with

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the applicant to

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get a confirmed position on this perhaps as part of the statements Common Ground process to agree or look into the way that appropriate membership should be?

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Okay, Mr. Westmoreland Smith, you've been patiently waiting.

1:15:57

Thank you. It's a similar points to that raised by Mr. bassford. As you'll be aware, the current membership of the SG as indicated by requirement 22 does not include Buckingham Council.

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Buckingham some council would like membership of the ESG.

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That is because the remit of ESG includes areas where there will be impacts as assessed in Buckinghamshire.



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And they may well be changes over time. And in those circumstances, we say it is appropriate that Buckinghamshire Council has membership of the ESG.

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It's a point we have raised and are discussing with the applicant in terms of drafting the DCO. It's a very easy solve. It's just inserting into paragraph two, paragraph 22 of the requirements. And those discussions are ongoing.

1:17:06

Thank you, my colleague, Miss darling would just like to come in for a moment.

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sort of it was expected to a certain degree but we are jumping around the agenda that we have in front of us, I was going to actually raise a question I think,

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as to why the quorum who is actually a host authority is not currently included in the list of members of the ESG. So I just thought it was appropriate to raise that now so that the applicant can timely come back on both points, so we don't need to revisit it later on. So I was proposing to pass that to the applicant on the question raised by Mr. Westerman Smith, and also the question raised by myself.

1:17:42

Thank you, Madam miscibility. Very much for the applicant. The the brief answer to your question as to why decor and Borough Council and Bucks County Council are not included in the ESG is effectively the scale of environmental impacts that those two administrative areas will have forecast to have on.

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We know that

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fucking bucks do not have any significant impacts. reported to Quorum has one significant impact forecasts in relation to noise, which is why they're on the noise technical panel. But as I mentioned earlier, the purpose of ESG is to look across the full breadth of the impacts that ESG is

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seeking to manage and regulate, as well as ensuring that there is diversity of opinion, but also that the cost associated with implementation and kept to a minimum. And so we think we've got the right, spread and breadth of the authorities that will suffer beyond the de minimis impacts.

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Thank you, Mr. Parrish. If we could have a response in writing from the local authorities on that point.

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At deadline three, that'd be helpful. Thank you.

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Just

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final point, I think on requirements 18.

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The we've already touched on the fact that the environmental scrutiny group wouldn't be set up at the outset of the transition period. In fact, it's not until 56 days prior to the due date for the first monitoring report.

1:19:30

I am struggling to understand why if such a big change was happening at the airport, the scrutiny group couldn't be set up so that it was operational from the outset of that period. And I wonder if you might provide some insight into that.

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Thank you, sir. Miss Felicity AirMesh for the applicant.

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The provision is drafted as a

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along effectively a long stop date on when it has to be

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establish,

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it doesn't preclude the group from being established prior to 56 days from the first monitoring report. So the short answer is, there may be steps taken that would allow for the early establishment of it. But what we wanted to secure was it being in place at the point that their first

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decision making or functions actually started, which would be from the point of the monitoring report being provided?

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Would it would it not be more helpful to have it set up from the outset of the transitional period and the operation under the DCO.

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So that any

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mechanisms, final Terms of Reference, any forms of meeting processes that need to be set up can be there and ready to go effectively from the start of the first monitoring period, rather than waiting and potentially delaying the process that actually is a critical control for the airport.

1:21:07

Thank you so much for the teeth, our image for the applicant. Again, we've heard what you've said. And I think it'd be beneficial if we just set out the technical steps that will be taken in establishing ESG. To help define why we've taken the position that we have, and I propose that we do that in writing.

1:21:28

I think that'd be very helpful. Thank you.

1:21:36

Do any of the local authorities wish to comment on that point, or happy to move on to the next agenda item.

1:21:49

Now in that case, we'll move on.

1:21:52

Requirement 19. covers the exceedance of AQ, air quality level two thresholds or limits. Now, we do have some questions on this, but I'm conscious of time. And I think we'll pick them up. But I sh five later in the week. So if we can move over to requirement 20 and a hand over to my colleague, Miss Dowling.

1:22:15

Thank you very much. I've just reviewed the questions that I was going to ask you in terms of practical drafting matters. And I'm actually going to roll most of those over to written questions. There's just one I'd like to raise now, because I think it would benefit a bit of oral examination. It's to do with paragraph six at paragraph 12 of requirement 20, which seeks to restrict public accessibility to meetings and documents of both the ESG and the technical panels in order to be open and accountable, can the applicant explain the need for this provision?

1:22:57

Thank you, Madam visibilities are a mesh for the applicant. I think I think it's worth saying that the purpose of that provision is to stop the specific procedures in the legislative provision cited from from applying the terms of reference for the ESG. And the technical panels include public.

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The technical panel Terms of Reference includes public participation. So the intention isn't to exclude the public, it's just to stop the specific procedures which apply under those legislative provisions from applying to the proceedings of the ESG.

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Do any of the council's want to comment on this point?

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Thank you, Madam Robinson for the joint host local authorities.

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I think it might be helpful just to point out that the purpose of this

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I don't believe the counselors object to in principle.

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I think given the nature of the

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technical panels and the ESG.

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It is it is felt to be appropriate. We will confirm that position. But that's my understanding of the council's view on this. And I believe this provision has been taken from the Silvertown tunnel developed consent order made three or four years ago where a similar provision if not identical, was in relation to the Silvertown tunnel implementation group, which has a sort of analogous function if you like to the ESG and therefore, it is precedented. If that's helpful by way of indication. Thank you.

1:24:42

Thank you that was helpful. Does anyone else want to raise any of this point? Otherwise, I'm going to pass it back to my colleague, Dr. Hunt to deal with requirement 22.

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Then I'll pass it back to my colleague Mr. Dr. Hunt.

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Thank you Miss Downing

1:25:00

In light of the proposed introduction of daytime Quickcam controls following exceedance of a level one threshold as set out in rep two Oh 32. Does the applicant have any proposed amendment wording to include within the DCO?

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Thank you so much relative AirMesh for the applicant, I think in the document we provided setting out the

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use of the quota counsel you refer to we set out a number of changes to the

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outline monitoring reports and the terms of reference. But we don't anticipate a change to paragraph 22. But we can confirm that in writing.

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I suppose my corollary question is, if a daytime quote account is considered to play such an important role in avoiding a breach,

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a limit or a threshold, should the data unquote account simply be on the face of the order rather than in separate plans?

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That Thank you, sir. miscibility Farish for the applicant.

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I think we need to take that point away. But the starting position explains the approach to not just the issue that you've raised. But the definition of the limits and the thresholds is we think they are adequately secured. And because of the technical way in which they are explained, they sit better in the outline documents that we've we've, we've defined those terms in. But that's not to suggest that the order doesn't adequately secure them just because they're referenced in either the terms of reference or the outline monitoring plans.

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Thank you. Do the counselors have any comments on that point?

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But Rubio and for the local authorities, no, we don't. So thank you.

1:26:58

Thank you.

1:27:00

If I can move on to requirement 23 exceedance for Level Two threshold.

1:27:07

Required requirement 23. Two, enables the undertaker not to apply green controlled growth. If the threshold exceedances are beyond the control of the undertaker. So in effect, taking air quality as an example, the airport airport could continue to contribute to worsening of an air quality breach that might

primarily be due to traffic conditions, but would be required to do nothing about this under green controlled growth, as it wasn't the main cause of the initial breach.

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My question is, would this enable the applicant to contribute to a deterioration in air quality without any form of control being imposed?

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Thank you so much relative our image for the applicant, you'll note that the subparagraph, you've referred to subparagraph. Two requires the ESG to certify that they agree in circumstances outside of the control. So we don't believe that will happen. And it's not the intention of the provision either because of the independent oversight provided by the ESG.

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Thank you, to the local authorities have been comments.

1:28:22

Thanks. So Robbie, for the UK authorities. No, no comments at this stage. Thank you.

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Thank you.

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I just wanted to raise that I had a couple of technical drafting points here, but I'm going to roll them over to written questions. And just for the benefit of the people. In the meeting today. The first question was regarding just on the point that we just picked up was how the ESG given they are not a regular regulatory body. Can they certify? And should it not be approved in writing. And the second one was to do with requirement 23, four and six, which is a point, things been picked up about the 21 days to approve or refuse a plan. Firstly, I note that unlike in many other requirements, there is not unless otherwise agreed in writing. So there appears to be no flexibility in the timescales. And secondly, we've already heard today there are concerns about the timescales being potentially too short from a local authorities perspective. So I'm going to roll those over those responses, those written questions, but just wanted to highlight that we pick them up. So I'm going to pass it back to my colleague, Dr. Hunt to deal with requirement 23 Eight.

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And just before I start on that, I should highlight that we have 15 minutes left on the agenda, so we'll need to be as quick as we can with these remaining items. So, requirements 138 as currently worded. Once level two plan has been approved, capacity declarations can increase rather than once the actions in the level two plan have been carried out and determined to be effective at preventing a breach of limits. And my question is whether for

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The Capacity declaration increases should be allowed. Following successful implementation of the level two plan or demonstration, that breach of a limit will be avoided or further breach prevented.

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Thank you, sir, Mr. Miletto, furnish for the applicant. The position in short, again, is that because the ESG will have to approve the level two plan, it provides buyers that independent oversight in terms of any further measures, it may be the case, for example, that a level two plan will include an explanation of how the measures to be implemented because accommodate further increases in capacity. And so we think that provision given the independent scrutiny, as well as allowing for that flexibility where measures are then implemented is sufficient to control the impacts, we acknowledged the position is different in the case of limits being breached. And hence, when you look under paragraph 24, that requires going below the relevant limits rather than the approval of the mitigation plan under that paragraph. But given the the level that we're talking about here, we think that that's appropriate in this context.

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Thank you, again, to the local authorities have any comments?

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At Robin, for the joint local authorities, so again, not at this stage, as I said, we reserve our position on the drafting the requirements as a whole in relation to green control growth. Thank you.

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Thank you.

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Are there any other comments on requirement 23?

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If not, we'll move on to requirement 24. Eight.

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The current wording allows a two year period for the mitigation plan to take effect if it's not effective, and a further plan has to be prepared that can then consider the application of local rules. Is there any way to shorten this process to be more responsive in the event of a breach or potential breach?

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Thank you, sir. Mr. Miscibility. For our image for the applicant. Again, sorry for sounding like a broken record. But because the independent oversight provided by the ESG would be relevant to

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a mitigation plan that's submitted under that provision. We think that that's appropriate. Also, just just to highlight, so paragraph eight B specifically allows for a program to be included within the mitigation plan that is submitted. And that can be shorter than two years,

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which again, allows the ESG to be part of the process in establishing a proactive process for managing the reduction below the limit within a defined program.

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Thank you.

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Requirement 24 Nine

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refers to 2009 A refers to potential for local rule. In the second Medicare mitigation plan to reduce slots, could you very briefly explain how local rule is implemented, and whether it's legally possible for a slot to be removed from an airline if they've operated within the scope of the slot rules, and have used the slot for 80% of time in the preceding year, or 30 or 70%. Under the 2022 slot regulations.

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He serviceability fairness for the applicant, the way that subparagraph nine is drafted is it's been very careful to specify the what has to happen is the identification of whether a local rule could be implemented to bring the limit back below the impacts that are

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forecast, it does not require the implementation of a local rule. And that's specifically because of what you've raised around the slots regulations applying a process to the implementation of a local rule. And I will be brief, but the process for introducing a local rule under the slots regulations is

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consultation with the the airport slots coordinator but also a Coordination Committee. And so what subparagraph nine is not doing is guaranteeing that a local law will be implemented because we're not seeking to circumvent or prejudice the application of those provisions. What subparagraph nine is saying is we will utilize those provisions to to identify whether a local rule could be implemented.

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Think what I'm

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the green control growth is

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Currently worded tends to imply that the backstop is a local rules that might be able to control slots. My understanding is that once a slot has been allocated to an airline, there is no legal mechanism to remove that slot if they've used it under the guidelines in the worldwide slot guidelines.



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Therefore, the implication that movements can be controlled and in fact produced in the green controlled growth framework is not actually correct. It can't be. So if there is, this goes back to the earlier points about requirement 18. If the slots significantly increased in the first period, after the DCO authorized development comes in,

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the risk is that there could be a breach, there is no mechanism then to reduce the slots. And effectively the airport then is in the position of having those slots continuing and potentially continuing to position for each.

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So

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I don't know if you'd like to comment on that.

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It's just two things briefly. The first is that you're right that some slots have a particular protection. So they're commonly referred to as grandfathered airport slots that are given to airlines where they use the slots and they've been allocated over a number of years. The same protections don't apply to all slots. So that's the first point. But the second is depending on which limit is

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has been breached or which local rule is being proposed. It doesn't necessarily require a change to the number of slots, but for example, local rule number three, which applies to the airport at the moment, regulates the or manages the particular aircraft or use of the slots rather than adjust the number.

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So that's those are the two points the local rule doesn't necessarily mean withdrawing the slots. But secondly, there are circumstances where the grandfathered ride status doesn't attach to every

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allocated slot.

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Okay, thank you. One final question just in terms of the timeline for implementing local rule. Can you comment on how long it typically takes? Is there any sort of procedural stage to it?

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Thank you, sir. Mr. Willacy Farish for the applicant, I think

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I might need to come back to you in writing on that point, I would just highlight that the subparagraph nine B talks about a program for the implementation of a local rule. There are established time periods in the slops regulations around some of the consultation

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which we can set out in writing that

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will will come back to you on on the typical timescales in writing

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can be very helpful if he could thank you. Are there any other comments on this particular point?

1:38:11

Now, if I can hand over then to my colleague, Mr. Ali.

1:38:17

So I'm, if there's no other points that anyone's raised with regards to green control growth, and this item on the agenda, I'm going to move on to item six, which is scheduled nine of the draft DCO documents to be certified.

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So the reason this is on the agenda is as currently drafted, it's almost impossible to identify documents in terms of then using them to discharge requirements. And I'm really looking at it from the perspective of enabling the efficient discharge requirements going forward.

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What I would like to suggest is that the relevant outline documents including the exam library number, and the final version number needs to be clearly identifiable in the schedule. I'd suggest that the applicant potentially has a look at schedule 15 of the Hornsby for development consent order that was recently granted, and you'll see what I mean,

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I can see that Mr. Owens got his hand up. Can I just first of all check with the applicant that they're happy to do that?

1:39:24

Since the applicant, Yes, madam, we're happy to take that, by the way. Thank you. And if I can then come back to Mr. Rowan.

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Thank you, Madam Robbia. And for the joint host local authorities.

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I think what would also be helpful is if the applicant could review schedule nine and tell us why each of the documents in it, isn't it? That's to say why does the applicant consider that each of those documents needs to be certified?

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I think the difficulty with schedules like schedule nine is they've grown like a bit like Topsy over the years and

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I think sometimes the purpose of including documents in them is a bit lost. And I think the local authorities would like to understand what is the purpose. I mean, some of it's obvious, like the book of reference and the plans, but some of the environmental statement, chapters, it's not entirely clear to us why they are in schedule nine. And I think we'd like to know, what is in the applicant's mind as to why they're in. I mean, clearly, as discussions between the applicant and the local authorities, for one, continue in relation to mitigation as a whole. The contents of this schedule need to be kept under review. So it may well change in any event. But certainly, those documents that do need to be in it and remain in it by the end of examination, clearly need to be appropriately referenced with examination, library references, but the key point is, I think the local authorities need to understand why the list is what it is. Thank you. So if I could ask Mr.

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Henderson when they are looking at actually simplifying it so that we understand that say, for example, Appendix 6.1, is, you know, the landscape strategy or whatever, if they can also review what documents are in there in response to Mr. Owen, and provide an explanation as to why they need to be certified documents, that'll be really helpful. So if you could take that away as one whole point?

1:41:23

That's certainly, very briefly the reason why the ES is mentioned, because, as we've discussed, there are many provisions that's to tie the scheme some generating, not necessarily new materially different effects. In order to do that, we need to certify the Yes, so that that forms a record of the effects we're talking about. But we'll take the point away, what we've tried to do is draft that as efficiently as we can. But recognizing the documents will progress through the process and the need for visibility of certain documents will always be operational looking at onesie for particularly. So thank you.

1:41:55

So I'm proposing to move on to item seven consents licenses and other agreements. In particular, I'd like to just focus on planning obligations. And we've touched upon these at various points this morning already with regards to whether or not they would still apply or not apply, depending on what happens with article 44. And article 45. I suppose what I'm looking at from perspective with regards to this item on the agenda is that the planning statement, which is as one to two paragraphs 5.8 point six to 5.8. Point 14 indicates that

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there's a proposed number of section 106 agreements that would accompany the development consent order application,

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the heads of terms are very, very high level, there's just a brief reference to what they will possibly touch upon.

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Obviously, if we are going to be able to take those section 106 agreements into accounts, when we make our report to the Secretary of State, they actually need to be signed and completed and submitted.

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And there is currently at deadline nine, which is the 30th of January 2024. requests that all completed section 106 agreements and planning obligations need to be submitted. Given all the information that we have on what's proposed is what's in the planning statement, can I just have an update as to where we are with section 106 agreements, and whether they are likely to be submitted before the closing examination?

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Tom Henderson, the applicant? Thank you, Madam for a brief update. You mentioned the heads of terms, we we've just yesterday circulated to the relevant local authorities program for the negotiation and completion of the relevant section 106 agreements. So we await their comments on that, but it's very much our intention. And we hope that the local authorities will work with us to achieve it to meet that deadline that you mentioned, for submission of completed agreements. So that's the end of January. And then just briefly on the on the points we discussed today about existing section 106 agreements and the interface between those and and the agreements negotiated this application. I mean, all I can say is that that's a live matter. It's understood and that will form part of negotiations to to work that point out.

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Thank you. So can I just ask if anyone else has any questions with regards to Section 106 agreements? Mr. Cohen?

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Thank you, Madam Robert, for the host local authorities is it's not so much a question. It's just that. I mean, we did indeed receive that program yesterday and we're led to believe that a first draft of the proposed section 106 agreement will be forthcoming in early October. We are currently considering the proposed program as to whether it is realistic to get to where we need to get to by deadline nine

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Certainly an initial issue which

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are leaving the applicant for their consideration, which is

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clearly a bit of an obstacle is that,

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as is entirely normal in these situations, the local authorities have asked the applicant to cover their costs in relation to the preparation of the section 106 agreement. And my understanding is at the moment the applicant has declined to do so. Therefore, that is clearly a bit of an issue for us at the moment. And therefore, if I could ask the applicant to take that away and consider their position further, that will be helpful.

1:45:38

I want to matter at this stage of I can also deal with a related matter, which is the matter I sort of mentioned at the beginning of this session after after the mid morning adjournment, which is what it relates to agreements, in a broader sense.

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And I just explained in a couple of minutes what it is,

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it's particularly you will have picked up from our local impact report and written representations that we do have quite a number of concerns in relation to the highways provisions of the draft DCO.

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And we it, yeah, there are aspects of articles 10 to 15, for example, the maintenance period, or the lack of one in article 11, deed, consent, etc. And we we do feel that akin to a section 278 agreement, we will need to enter into a high res related agreement with the applicant alongside a section 106 agreement

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that can be done under the

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Yeah, anticipating article 17, which provides for entering into agreements. And

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that will deal with a number of issues, a number of issues that the DCO itself does not deal with, and you wouldn't necessarily expect it to. But it's common for high res agreements to be entered into alongside a DCO to deal with things like the submission review and approval of detailed design specifications and schedules of highway works, inspections of works, defects.

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Tracks, Mr. Owen is indicated in the planning statement that offsite highway works will be likely to be secured through section 278. That may be funded through section 106. So I think that may be the

answer to your question. Well, it wasn't really a question I was raising, I was just pointing out that we will require a related highways agreement. And also you mentioned off site, how it works. We do have a number of concerns in relation to those and requirement 29. And again, we think a lot of those can be dealt with through a legal agreement. I mean, some of the provisions may be in the 106 agreement, the 106 agreement, but others may be in a separate harbors agreement, we don't need to obviously, take our time on those. I think in terms of our requirements in order to be able to make a recommendation.

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I was trying to make the point that if the section 106 isn't submitted on the 10th of February, yeah, then we will have to report it as though no section 106 exists. So we don't it's unlike planning permission. As I'm sure you're aware, you can't recommend subject to a 106. For the DCO, we actually have to have

1:48:16

to have a section 106. So the point I was making here is some of the consents and licenses and stuff that you talked about can continue after the close the examination and be resolved through that. But in terms of enabling us to put forward a recommendation to the Secretary of State, if, for example, the employment and training strategy, which is one of the things that will be secured through section 106 agreement is not submitted. And we cannot take that into account. So that's going to occur. So on that point, I can just also see that Mr. Bassett has his hand up because he or she wants to say with regards to that, yes. Can I just come back on it? I mean, we I understand exactly what you say. And it would certainly be our wishing intention to complete all of the required legal agreements by the end of the examination. So they can be taken into account in your recommendations. And that's what is typically done. And therefore we're going to work towards that. The final point I want to mention, because it's not particularly related to compulsory acquisition, but more relation to works is that we do require protective provisions for the local highway authority function as well. So that afternoon, maybe when we were talking about protective provisions we can do but I made the point now because it's related to works really robbing compulsory acquisition. Thank you. But again, protected provisions cover a multitude of things and we have we're discussing it there because it also does cover CIA. So that's why it's in that agenda, but we are have got an item on the agenda specifically discussed protective provisions, not just for yourself, but also I know national highways are keen for some as well. So Mr. bassford, anything you want to say?

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Our password for national highways just very briefly since the points have been raised by you and Mr. Owen.

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There are

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elements which are off site and were required to be delivered for highway safety purposes where we're going to be putting forward some Grampian requirements to secure, secure highway works.

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Those would ultimately be addressed through section 278. But we wouldn't expect the 278 to be in place before the end of the examination, just the security of the anticipated works. Okay. Is there anything else anyone wants to raise with regards to other consents, licenses or permits?

1:50:37

No, in which case, I'm going to hand back to my colleague Miss Davis to close the hearing.

1:50:44

We haven't been notified that anyone wishes to raise any other business today. Before we close can I check if there are any other matters that anybody wants to raise?

1:50:57

Okay, given the number of action points rather than go through these in detail now there'll be published on the project page of the national infrastructure website in the next day or two. If there are no other items that are relevant to this hearing, Can I remind you that parties must provide any post hearing documents on or before deadline three, which is on Thursday, the fifth of October. The recording of this hearing will also be put on the inspectorates website as soon as possible.

1:51:24

Next event for this application will be the compulsory acquisition hearing. This will be held at two o'clock this afternoon and is also a virtual event. The next issue specific hearing is a blended event starting at 930 Tomorrow morning, this will cover need socio economic matters in greenhouse gases and climate change. The agenda is for both of these are available on the project page of the national infrastructure website. Before we close we'd like to thank all of today's participants for their time and assistance at this hearing.

1:52:00

Just had a note to remind everyone to remember to log out of this meeting, and then you'll have to click on the new link to join this afternoon's meeting.

1:52:12

The time is now 22 minutes past one and this issue specific hearing on the draft development consent order for the proposed London Luton Airport Expansion is now closed