

AUDIO_LUTON_ISH10_SESSION2_0112202

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Most of

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the time is 10 past 11. And I'd like to welcome everyone back. I do realise it's exceptionally hot in here. And whilst as you can probably tell, I'm enjoying nothing more than a riveting conversation about planning law. I do realise that some people might find it a bit difficult. So if you want to remove your jackets, please feel free to do so.

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Right. So we had just concluded by discussing article 45.

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So, I'm proposing unless anyone has anything with regards to articles, including the ones we just talked about, or any of the other articles, so that was going to move on to Item five on the agenda, which is authorised developments and requirements.

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Anyone? Nope. Okay, so we're going to just deal with requirement five, which is detailed design, phasing and implementation. I'm going to assume that everyone in the room is familiar with the requirements, I wasn't proposing to write it out. Read it out. So I'm gonna start I note that phasing has now been introduced into the title. So just for the benefit of everyone here, can you start by explaining where in the requirement the phasing referred to in the title is secured?

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Thank you, Madam Tom Henderson to the applicant. I think

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the first point to note in response to that is that

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we've talked about the application being catered have been delivered in quote unquote, parts, which is, conventionally the word that is used in DCAA. Drafting, but could equally in my view, be the word phase. And in fact, if you look at

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the quiet one one has has a definition, which essentially, that's sheduled two,

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paragraph one subparagraph. Two, explains that part could be referenced to a stage phase or other relevant of the development. So we tried to clear that up in that

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provision. And

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in answer to your point, then where is phasing dealt with? Well,

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there's a sequence of things that we've done in the amended draft developer consent order, I think the first one and importantly, we have brought forward the scheme layout plans, which were contained in the application

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into this provision, we've introduced that as a as a certified component of the application. And then now, in that sense of secure document, I mean, I don't know if you want to have some of those on screen, because I think they might well help to inform if you've got this section of the discussion, we call them teed up. Because in, in essence, our submission is that

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those plans provide our our indicative

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phasing of this development, it's not one single plan, you'll see it carries through. I think there's one plan, which is the best one, it is not good enough. But I think we've got baseline plan, Planet 21 and a half NPPA. Planet 27 MPa, and then finally a planet at 32 NPPA. So our submission and I know there's been comments on the word master planning and how we know what's going to be built well, these documents set the framework for the for the consent that we're seeking, and how that would phase out. And as I said, at

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the first round of issue specific hearings.

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This is the framework within which we're developing, what we're seeking to do at this stage is not confined ourselves to committing to specific phases that we will develop in one go, we want the ability to expand the airport in line with this master plan, if you like, at phases, which will respond to to varying demands. So that's the that's the core flexibility that we're seeking to achieve through all of this drafting.

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So I think that's the

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first point to make. And as I said earlier in the week, I see this as the jigsaw and sheduled one, which is the works of the pieces of the jigsaw, which will eventually map onto these plans, and result in the scheme that we're seeking consent for. So that's a sort of an overview position. And what you'll see we've added in in requirement five

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at

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subparagraph two B is that when an application is made for detailed design of a phase or component of the development, that application has to identify the specific works with reference to shedule one and the components of those words which comprise the part quote or slash phase of the authorised development, which detailed design is being sought. So, in simple terms, the application will be saying to the local planning authority, we now want to bring forward these five words from shedule. One they make up this component of the of the scheme layout plans, we will pick that visually.

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Roman to have that provision also requires us to demonstrate which components of the master plan have already been done.

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delivered.

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And then there's there's further information about how that's complying with parameters, what are the misty deviation etc. So,

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in summary our answer to your point, and I think it's important to focus on substance rather than form. We say that that provision as the effect of a phasing requirement, whereby the application inherently will set out the phase of work, so which consent sort and show where they take place, and we think that

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provides the clarity that's needed. I would just say as a final point, it's important to remember and we've, we've emphasised this at New

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paragraph five to e, that, of course, the local planning authority has the ability to request further information in relation to any application if they consider that's necessary to be able to decide it. So it's always within the gift of the relevant planning authority for any of the works in their areas to tell us that they need more information before deciding requirements. So there's a combination of changes and elements within the requirements, which we think respond to the comments that you as the panel made

in the in the first round, that was the specific hearings. So I think the concerns about phasing can fall into two camps. There's the one where we're looking forward in terms of discharging the requirements. And looking forward. You know, in eight years time, there's a planning officer in Luton Borough Council trying to work out what he's actually looking at in front of him, and how all fits together. And I think you made reference earlier in the week issue specific hearing aid to the fact that you've put in requirements 37, which is the register of requirements. So hopefully, one of the reasons that we were looking at phasing as potentially a requirement was the ability to track what has been delivered and make sure that you know, that the landscaping for that element, the drainage for that element has all been cleared and discharged and providing it and I think that what you're saying that now, potentially does it. But I think the other issue with regards to phasing

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was that we've that's been put to us is sort of twofold is the issue is is that when the consent, but 18 million panelling planet pick 80 million passengers per annum was granted, it was given a protectionist, timescale to 2028. But actually, what happened was, the growth is much more rapid that but the mitigation wasn't necessarily in place. And so one of the things about a phasing condition is the ability to ensure that the mitigation is delivered in a timely manner before you move on to the next stage of the development. So that was something that we were already exploring, because given those concerns that were put to us. So thank you for that explanation with regard to phasing. I just want

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please come back. Thank you, for letting me interject there just just two comments to assist with what you just said. So

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another important component that we've introduced into requirement five, you will have noted I've just give you the reference.

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That is requirement five, paragraph three, D. And that's a requirement that the detailed design must not give rise to materially normativity different facts comparison to what's reported in the environmental statement. And that was a direct concession in response to the point you made, how can there be certainty that the development that comes forward in the in the relevant phase is in conformity with environmental statements. So that's why we brought that forward. So I think it's important to note that that deals with the physical elements which aren't covered by GCG. But of course,

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the three elements of development must, must comply with with a green controlled growth framework. And that's why I think, perhaps we were going to come on to this point is the subject of ensuring capsules is mentioned, we, we don't think those are unnecessary. In this case, because of the green controlled growth control growth framework, which we've set up. We haven't gone for the pure form of green controlled growth, which would be to have an uncapped development and only limit ourselves to environmental outcomes. We have set an overall cap at 32 mppa, for both community and relevant stakeholders with certainty, but within that 32 NPPA.

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Expansion, we say that

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growth is an environmental effects are controlled both by predictable growth and as I say, this new provision in relation to the built form that it must comply with the Rochdale envelope that set out in the environmental statement. So thank you for that explanation. I think from our perspective, we'll take that away and then come back in some of the written questions that we have on it. I'm just going to offer the opportunity for the host authorities and other authorities to comment on the element of phasing. My colleague Mr. Robinson is going to come on to the design part of this requirement after I've dealt with the phasing element of it so Mr. Owens, is there anything you want to add?

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With regards to phasing, Robbie own for the joint host local authorities, Madam just just to draw attention to the comment we made in rep 5068. Broadly welcoming the changes to this requirement in relation to phasing, we did raise some queries, particularly the link between approvals under this requirement and the other pre commitment requirements that and how the two are linked together. And this linkage is a common approach without line planning permissions. And whilst a DCO is not an outline planning permission as such, it's clear to us it has many of the features of one. So I don't believe the applicants responded to that yet. But that's the only thing I wanted to really point out. I'm sure you'll get back to say to me, you're going to get the next deadline. But let me just let you say that. Yes, we are considering that point. Thank you, Madam tom, tom Henderson's the applicant. And I think it would be worth just just spelling out though, at this stage that we are, we're not seeking to link. This is quite complicated to explain, but bear with me, we are not seeking to constrain ourselves so that every requirement,

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separate requirement five has to be discharged into relation to that part. What I'm trying to say is, it may be suitable for the applicant to establish a construction management plan that could span multiple phases. And so we wouldn't necessarily be discharging that requirement in relation to every detail work. I mean, that's, I think, an important bit of flexibility. I believe most DCS accommodate that flexibility for good reason. I understand the point that the local authorities making about understanding which management plans might necessarily apply to which work you're seeking consent for. And that's something we can take away potentially.

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Just want to come to Buckingham's counsellor, see if they have anything to comment on with regards to phasing down. Thank you. Okay, thank you. So I'm just now at issue specific hearing aid, we obviously started examining the issues around design, and trying to ensure the scheme would deliver high quality design and how it be secured. And we said as an action point, we've been picking it up here again. So I'm just going to pass it to my colleague to see who's going to deal with the design element of it. And then just

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Yes, we had a discussion

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on NSH aid. And it's sort of centred around the sort of the stages leading up really to the submission of these documents and it to in terms of what's required at requirement five, and

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we'd obviously gone on and suggested whether a design review process needed to be followed on that particular

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element it could you just explain to me how the requirement will

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it lends itself to people participating into the parts that you're going to submit for detailed design, sort of how people can feed into that before you actually submit it to the to the councils? Or is it the intention to just submit the details to the council's who will have that eight week period to determine those applications for those parts?

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Thank you. So Tom penderson to the applicant? Yes, I mean, the short answer is

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requirement five is the home of where

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a decision is made over whether design, the design is acceptable. And that's the decision for the local planning authority as the body competent to discharge secondary consents. And our primary document for securing Good design is the design principles.

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And it's a requirement that requirement five,

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that the development must be in accordance with the design principles, you'll recall it, it used to say substantially in accordance with and we tighten that up. And we've also expanded the

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sign principles that the the recent Deadline five. So our position is that

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that is the appropriate mechanism to ensure that the design that comes forward or have to demonstrate adherence to and compliance with the design principles, and then it's a matter for the relevant planning

authority to be satisfied that it does, of course, if it's if it wants more information on that it can request it on receipt of the application. And ultimately, if it considers that the scheme doesn't comply with the design principles, then it ought to be rejecting the application. So that's in simple terms, how the process would work. I would say that the door is still open for discussion on the design principles. We don't say that they are they're a finished document as yet. We I think at the risk of the previous round of issue specific hearing invited comments on those we continue to welcome comments on how those design principles could be enhanced or expanded to deliver a good design that's, you know, clearly our our intention to do that.

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But we do think that's that's an appropriate process.

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To,

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to secure good design and on your point about, you know who would be involved in this price as well. And yes on on the design matter, it's a matter of the relevant planning authority. But of course, multiple other requirements will need to be discharged in connection with a requirement five application around surface water,

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biodiversity strategic landscape master planning, which do engage other stakeholders. So it's not just the case that the local planning authority would be solely involved in design matters. And we've added the discretionary consultation function. So where the local authority considers that the application is relevant to functions of other those specified bodies, such as the stakeholders, they can, of course, consult with them as well. So that's how we see it working. Sure.

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Okay, thank you for that.

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I'd like to turn to Luton Borough Council because ultimately, a large proportion of this is going to fall within your rebate. So I'd be interested in some comments on to whether you can see that working.

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Thank you, sir. Robin, for the joint host local authorities. I think I think at this stage, we wanted just to

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make the point that the this requirement is only as effective at driving good design, as the design principles are. And the design principles document appears to be focused on securing in the main sort of embedded mitigation

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relied upon in the environmental impact assessment. And whilst that clearly needs to be done, it doesn't contain much in the way of detail as to what the design vision is for the new building and structures. And where this did come out yesterday. That there's no indicative detail concerning a range of matters such as material palette, design, coastal public realm type environments, and sort of other similar things that you commonly see in design principles documents. So

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we would encourage the applicant to consider this further and reflect on whether they can provide more by way of indicative design, given the importance that is placed, rightly so across the whole infrastructure sector now on design principles. Yeah, the National Infrastructure Commission has a very helpful document on this you may be aware of, and we would encourage the applicant to consider this further and see what more can be done.

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Thank you.

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Yes, we, we did have a discussion on the Design Principles Document, obviously, and issue specific having sex and we've noticed that it was updated at deadline five, and we'll be obviously interested to hear the comments from all the council's on the merits of that. Is there anything you'd like to say Mr. Gertler? Yes, thank you, David Gertler, I'll try not to be as

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aggressive as I was last time.

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The applicant has referred us to the design principles, and they have encouraged me to add to the design principles.

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If you go to the document is rep five, zero 34. And if you go to the section,

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our concern about

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having a design review panel is really only and it was in our previous reps is really only in relation to the buildings, which are public facing buildings that the large hotel 400 bedrooms, and terminal two with its plaza in front of it, excuse me.

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If you go to the section on the terminal, which is set out in table 4.3, terminal work design principles and their master plan, it did say that it was going to meet all the standards for security and things like that. I've said that, but that's required for an airport. But but it is purely functional. And there is nothing in

there that talks about attractive design and what the appearance might be. And it does say that there will be high quality materials and the local authority can approve those. But I also feel that the applicant didn't really understand what a design review panel does. And in discussions with the applicant, I felt the applicant might have thought that design review panel only gets involved when the application is submitted.

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We would want involvement before the application submitted. So when the applicants master planner did refer to HS two or the Olympic Park having their own design review panel. Great if that's what they want to do. We would like that and we'd like to be involved. And we would like to have specialists who could comment on things at that stage. We we aren't anticipating a planning application or discharge or the requirements coming in. And then suddenly the local planning authority delaying the whole process because we want the Design Review Panel involved there. We would like to be

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involved at an early stage. So personally, I think the I can't remember how many points there are in this table 30 or 20 points. They're all really just technical. There's nothing proper about design and appearance. So, so that's really opposition. Thank you, Mr. Gertler. Obviously, this is a DCO hearing. So looking at drafting and I suppose whilst what you've said is important, it's probably something that the applicant doesn't have their design people here to discuss. But I think if they can note those comments, maybe come back and writing on them. And I think it wasn't emphasised at the end of issue specific hearing aid. I think it was the concerns with regards to that. But I suppose what we were looking at from a drafting perspective was, you know, if a design review panel was appropriate, and I think further views on that issue, specific hearing aid, should it be on the face of the order of the requirement, or maybe through the design principles document is secure? So Mr. Henderson, if you want to take that away as an action point, but if there's anything you want to add at this point in time, please do say.

21:04

Thank you, Madam Tom Henderson, for the applicant, we will certainly take that point away and will reflect on both this discussion and the discussion. Earlier in the week. I mean, all at all I would repeat is that it will greatly assist us to receive specific comments about how we how we can improve these design principles, we can work on them ourselves. But the more input we get from others, the better the document will become. So we do encourage specific comments from interested parties. And I mean, I take this to get this point, there is a section specifically on good design at 2.2 of the design principles. So it's not the case that there's nothing in there. I accept that it could be finessed further, and we we will look to do that. So I decided things. Mr. Gertler, there's two opportunity.

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So anything else you want to clarify?

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You know, I think just to just to quickly summarise, obviously, we we understand that design principles can only go so far at this stage, but I think it's particularly some of those aspects of the proposed

development, which really are, you know, like the proposed terminal in some of the buildings, whether something is needed to a certain stage before these applications submitted, that sets a bit more direction in agreement going forward into how these design approach of these buildings need to be taken forward. And I wouldn't be expecting to see that further like the I had training ground potentially, no, it's really just a focus on where that is needed. And I think that's something that we would want a little bit see a bit more clarity on.

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So

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if we could have that as an action point.

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And when would it be a realistic deadline for that? Thank you. So Tom Henderson's the applicant, I was going to come to this point at the end. But I just wanted to suggest I mean, we,

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for deadline sets, which obviously is not very far away, there's only really one

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memo we're likely to bring forward, which is to secure the air noise management plan, which we mentioned. Now, our proposal would be to bring forward a comprehensive set of updates at deadlines seven, so that no draft DCO deadline six. But deadlines seven allows us to address the article 44 points, the design points and other things, too. So I just sort of wanted to make that suggestion and see if that was acceptable to you. I recognise you need to issue your commentary on the DCO in January. So you would have that DCO a week before you issue your your commentary. So I think if you look at the way that the timetable is drafted, it does say if required after the DCO. And obviously that was to enable it potentially to be updated to catch anything that was delivered at the hearings, I think what would be helpful, because obviously, we will be working on our recommended DCR the schedule of change, recommend changes. So at deadline six, rather than updating it, if you could just say we are proposing to do X, Y and Zed, then obviously that helps us and probably saves time all round with regard steps. That's fine. So

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on that point, I'm then going to move on to requirements seven requirements was seven was on the agenda. I think I've actually had the answer to this question, but it's because there's notice of commencement of authorised development. It's been deleted from the original

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DCO that was submitted. And I was looking for an explanation of why but I think you refer to the fact it's been now wrapped into requirement five sec, correct.

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Tom Henderson for the applicant that is correct. It's now it's a requirement five subparagraph five, and actually, we we've expanded the commitment. So it's not just written notice of commencement, but it's also written notice of completion. So that goes to the point that authorities will know when a phase has been completed. Okay, thank you.

24:42

So, the last agenda item on item in this agenda item was the use of substantially in accordance or in accordance with in the drafting or number requirements. The applicant and I'm sorry, I don't have the exam Library Reference Number has provided an explanation for the difference in that for documents that are out

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line and therefore may be subject to change, you use the drafting substantially in accordance with the requirement. But for documents that are final versions and secure through the DCO, then it would be in accordance with, can you just confirm with the applicant? That's correct.

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Tom enters into the applicant? That's correct, madam. Thank you. So if I can just turn to the relevant host authorities who did raise concerns with the use of this drafting? And just ask whether this explanation helps you understand it and whether it addresses the concerns that you have?

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Robbie own for the joint host local authorities, madam? Yes, we have taken on board the explanation given by the applicant. And we think there is logic to that approach. So we're happy with that. Thank you.

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Thank you very much. So if you can move on to unless anyone's got any other questions? Oh, Mr. Bass has

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popped up on my screen.

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Yes, thank you, Madam, I have some power Basford on behalf of National Highways, I have some IT issues this morning. So I'm using a phone to find the correct button apologies.

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In relation to the question of substantially in accordance with the concern that national highways has is that that device is used most frequently, where there is a fairly advanced document, because then there can be substantial accordance. If the document is too early in its evolution, then, effectively, the substantial accordance issue

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means that you can drive occasion horses through the through the certainty which the device purports to give.

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And so for instance, if one were to think about the firmer,

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or indeed GCG, anything of that nature where for instance, you might expect ranges for thresholds or the sort of information that might comprise phases. And I think we'll have to come back to phases and stages shortly, anything like that if if you don't have a document that is sufficiently advanced, then you have problems. So

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what I what my mission is,

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must the be that, to use the device, you have to have a more advanced document, you have to have

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more parameters, or more information at present, we do. We don't know the thresholds in the tremor, those are yet to be ascertained. And in default with that you have come up with other devices on which we will make representations separately. But at present, we don't think that that document in particular is sufficiently advanced to benefit from the substantially in accordance with device.

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And so before I go back to the applicant on this,

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what would your suggestion be for those documents that you feel are currently at a very high level and unlikely to drive down to the level of detail work could be substantially in accordance with on the basis of what the applicants explained as to how that works? Well, I think that we need to make some progress as a result of the modelling which we know is to be produced in due course, and actually to have some thresholds, the documents need another term to handle in order to provide greater certainty so that we know the works and I can make my submission on phasing.

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Based upon what Mr. Henson has helpfully explained earlier,

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you need to have greater certainty. So taking Mr. Hanson's point in relation to phasing and this submission of details in relation to the project. At this stage, there are notionally stages or phases one to a and to B. Now those terms are not used in the DCO itself.

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And so, we don't know yet what is it in each of those stages, phases or part. Therefore, we don't know the thresholds. And we don't know the works in the mitigation that relate to each and we think there should be some more clarity about that. Alternatively, there needs to be some definitions inserted so that you can have Grampians that trigger particular impact at particular triggered particular mitigation, when particular impact are identified. And needless to say national highways is concerned in relation today to junction 10 works to know what works for what works unlock a given passenger throughput, and therefore trigger the

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The need for mitigation at this stage? We don't know that hasn't been clarified yet. We'd ask for that to be done.

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Okay, you mentioned Grampian type requirements a number of times now at various different issues specific hearings, just picking up on the point that the applicant made. I mean, obviously, in mid January, we have to produce our own recommendation as to any alterations or changes that we see should be made to the draft DCO.

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Given your concerns, and given your referencing to that, can you provide me with any form of drafting or any indication which climates that you would want to be worded in such a way?

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I believe we have already indicated some elements which require Grampians. But I think what we will do as early as possible is to expand that so that the relevant, relevant information is before you and certainly so that you will have a good time to give your commentary in January. Thank you. Does the applicant want to respond?

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Thank you, madam. Tom Henderson for the applicant. Yes, a few remarks in response, I think just specifically on the point of in accordance with substantial unicorns with I don't think Mr. bassford submissions was suggesting in principle that that wording was inappropriate. I think the point is it then goes to the particular control document that sits under that, which is not in of itself, a DCA drafting issue.

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I mean, we've discussed the trimmer at length, and I won't I won't go back into that in too much detail. But But I would just say that

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we think that that document does contain a sufficient level of of detail and certainty. And

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fundamentally, we don't for the reasons Mr. React said earlier in the week, consider the Grampian condition is necessary, the scheme mitigates its impacts, and the trimmer establishes a process by which mitigation will come forward at the right time. And, and the key point there is that the mitigation is adaptive, it will come forward at a point in time which is required, which is required. And it's also capable of being adjusted at the request of a stakeholder who might wish to undertake a larger form of intervention, which combines our form with mitigation. So we think it's a more sophisticated way of dealing with the issues that national highways are raising. And it comes back fundamentally to the point that this consent is trying to take a step forward

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and deliver an outcome based form of consent, not one that's got sort of set triggers or phases where one has to do things. It's monitored. It's measured through GCG, through the service access, mitigation measures we've talked about this week, and that's how

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the scheme is mitigated at the right time and in the right way. So it's I think it's a conceptual difference that we have on this point national highways, but we certainly don't consider that Grampian conditions are merited or necessary in this case. Thank you. I wasn't proposed. Mr. Bassel. You got your hand up?

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Yes, madam harvested on behalf of National High was noted, noting what Mr. Mr. Henderson Henderson has said, we we and there is not an in principle objection to the use of the device.

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substantially in accordance with the question is whether it is appropriate in relation to particular documents that are referenced in the DCO. And that that is the DCA drafting point, because of course, you would drop them out of the DCO if they're not appropriate, and you would have to substitute other controls. So that that is the that is the drafting point there. I think that in terms of the point that Mr. Henson was making about whether the trimmer is sufficiently advanced as a matter where we continue to discuss it with

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with Luton Airport, and we were weighed satisfaction in relation to the thresholds that they are indicating will be apparent, but it isn't their intention at present to include them in the DCO. And we said the threshold should be in the DCO. So that you and we know when impact on the national highway network, the strategic road network will be will be anticipated and when we can expect mitigation to be supplied. We don't want to be left in debt about that.

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Thank you, my head, somebody has lowered my hand. And that's very helpful. Thank you.

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Mr. West, Mr. Smith, is anything you want to make on this point about substantially in accordance with our own accordance with from on behalf of the County Council? No, that's not the point we've had to raise. Thank you. So I'm going to move on to item six, which is part three requirements 18 to 25, which was green control growth. This item was on the agenda to enable the examining authority to potentially potentially pick up DCA points following the discussions that yesterday's issues was Oh, Mr. Owens, but I'm sorry, sorry.

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To interrupt, there was a final sub item under item five, which I don't think we covered, which in terms of in terms of whether there are any other requirements. Thank you very much for reminding me. Yes. So if we can just go to the parties in the room, I'm assuming mr. own given you brought it up, you do have some other requirements. So

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Mr. Owens, on behalf of a post authority suppose is going for interrupting, I wanted to make three brief points.

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The first is a general point that, at the moment, we are working hard to agree with the applicant, the contents of the details, sort of control documents, hopefully, we will manage to do that by the end of the examination. If we don't, then it may be that we need to come to you and propose some new or change changes to the requirements. That's the first general point. Secondly, in relation to a lighting strategy, you may remember that central Bedfordshire Council has raised concerns regarding the impact of lighting to designated heritage assets. And the applicant responded to that in rep to a dash 005 to the fact that it was considering securing a lighting strategy.

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further detail is awaited from them in that respect. But I want to just sort of blank this now, because this could be addressed by way of a new requirement, covering the design and planned operation or proposed lighting. So that is, in our mind outstanding. And the third point I wanted to make, which you did touch on earlier, and I think I was

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too quick or too slow not to comment on the letter from the Environment Agency because it it came in only yesterday, I believe, I think we will want to discuss within the joint host local local authorities, the points made by the EA, I think less so in relation to their wish to be a console tea in relation to construction practice matters under paragraph seven more. So I think in relation to the suggestions they've made in relation to paragraph 35.

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In the same shedule, dealing with the process for discharge requirements, because clearly, that is of concern, that is an area that is relevant to the host local authorities. And it's something we'd like to take some time to consider. So I think we can give you a written response at deadline six, if that would be helpful.

37:22

That would be helpful. And I think that memory the issue of deemed consent, and the timescales for deemed consent have already been raised as a concern by various organisations. And so I think the Environment Agency are also just adding to that discussion, which is why I hadn't proposed to discuss it in any detail because we had a spouse questions on it.

37:47

Okay, so, back to green control, guys. So, I'm going to start as per the agenda asking the applicant to provide a very brief overview of the changes to the drafting of the green control growth requirements. But having reviewed the drafting of the requirement, in light of yesterday's discussion, many of issues that I may have picked up drafting perspectives, such as membership of the SG and technical panels, thresholds, etc. were covered in greater detail. And many are subjects with further actions as a result of yesterday's meeting, or could be done more appropriate through a written question. And as a result, I was not proposing to ask any further questions on drafting. But if you can start by obviously, just highlighting what how it's changed since the last

38:32

discussion on this matter.

38:34

Thank you, Madam, Mr. philosopher, Ramesh, for the applicant.

38:40

Following on from your helpful remarks at the start of today's proceedings, we're not going to go through the minor changes, which are in the sheduled of changes, Mr. Henderson referred to.

38:50

There are five substantive changes that have been made made, many of which were discussed yesterday. So I'm just setting this out in summary in high level form. The first is the removal of the provision which related to the transitional period in paragraph 19. As we discussed yesterday, the effect of that is to remove the transitional period in relation to noise. The monitoring period provision is then amended in relation to surface access, air quality and greenhouse gas emissions. So that the monitoring begins on the first of January following the service of the notice again, that was discussed yesterday. So I won't

39:31

discuss that in much more detail. The second was the insertion of the slots allocation expert as a member of the environmental scrutiny group in paragraph 19. The third is an increase in the consultation period or the environmental scrutiny group once they received a relevant level to plan or a mitigation plan. And in particular, it increases the period from 21 days to 28 days.

40:01

The fourth, which relates to a point raised by Dr. Hunt yesterday, is the streamline submission in relation to the level two, or mitigation plans where there is an exceedance of more than one limit or more than one level two threshold.

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And the effect of that is to allow for a document to be submitted in respect of those exceedances rather than requiring separate plans in respect of each individual exceedance.

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And then the final change, which relates to paragraph 24, which as you'll know, is the provision relating to the review of the implementation of green controlled growth has been the subject of two changes. One relates to the removal of the transitional period, I mentioned,

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the provision required previously required a review to take place

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after a set period of time at the end of the transitional period. But because the transitional period has been removed, we've replaced that with a requirement to carry out the review no later than three years, following the service of the notice under Article 44. The other change that we've made to paragraph 24 is

41:20

because this part of the review, or submission is permitted to vary the specified periods,

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which apply under this part. So that's the period for the submission of plans, the period, the consultation period itself, because because that provision allows modification of those periods, we've just inserted a deeming provision so that the terms of reference are deemed to be modified to give effect to any approval that the ESG provides in respect of those matters.

41:57

Thank you, I'm going to come to one of the parties there at the table and ask them if there's anything specifically that wasn't with regards to drafting of the green controlled growth requirements. And then I'm going to come on to a point regarding condition 19 of the 19 million passenger per annum consent, which was touched on yesterday. And we said it's an action point, we will roll over to here. So just in case, that's what you were going to talk about, I just wanted to preempt that. So I'm going to confess to the joint house authorities, is there anything in terms of drafting with regards to green control growth? Cuz obviously, we had quite a lengthy discussion about the green control growth framework. And, you know, like all of these things, there was an overlap between the two hearings in a way. So it's just things that when potentially not discussed there that we need to pick up now.

42:48

Madam, thank you, Robin, for the joint hosts local authorities, we do a few things which are just touch on, I won't deal with detailed nitty gritty drafting issues, more issues of principle that arise from the drafting we've seen. And obviously, we confirm all of this in our post hearing. Note, that the first point relates to the subject of consultation and the consultation period in paragraph 17, is is has been extended from 21 days to 28 days.

43:19

The issue we've got, though, is that the drafting in relation to the concept of consultation

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doesn't seem to us to be as clear as it could be. What I mean by that is I'll give an example. None of the provisions in which the term consultation period appears indicates the point at which consultation is to occur, nor who is to be consulted.

43:42

The drafting only appears in provisions that require the undertaker to have regard to comments received in the consultation period. But that doesn't that doesn't actually appear to be on the face of the DCNS. We've missed it a positive obligation on the undertaker to consult in the first place.

44:00

It may be that that's it out in the various green could GOC green controlled growth control documents, but it ought to be clear, we would think on the face of the order, particularly where there are deemed approval provisions. So that's the first point I wanted to raise

44:16

in relation to

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other points, I think paragraph 19, the environmental scrutiny group that's been amended to say that it'd be set up as soon as reasonably practicable following service of an article 44. Notice it's not immediately clear to us that there is that there is no good reason why couldn't be required to be set up prior to the service of a notice so that I think my perspective would be a happier, happier solution.

44:52

We've got some detail points on monitoring in paragraph 20. But I can deal with those I think better in writing

45:02

The

45:04

other point I wanted to make

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is that

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in relation to we, we gave some responses to the your questions in rep four, one to six.

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And I think the key issue here relates to enforcement requirement 14.

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The Hartfordshire authorities are previously queried and did so in the local impact report rep one a 003. Why this provision in requirement 40 does not permit a request

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to be made to Luton Borough Council to take enforcement action where there's been a failure to produce a level two plan or a mitigation plan. It's only for failure to implement the plan. So we haven't had a response to that so far.

46:03

And the only final matter is, again, we may be missing something here.

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But it does arise from the hearings earlier this week, that there doesn't appear to be a remedy

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for when the authorised development is persistently in breach of a limit.

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The sanction in that event is that

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the Apple can grow no further, but this risks persistent, unacceptable effects without without, without there being any clear mechanism to take further action. So, again, there may be this may be an aspect of GCG that we're not understanding. But I, if I could leave that to the applicant to consider and respond to that'd be helpful. Thank you.

46:49

Thank you before I pass back to the app, because some of the topics that you touched on were discussed at yesterday's issue specific hearing, which is potentially why we're not raising them now. But if I pass over to Mr. Henson, and if there's anything he can respond to, or wants to respond to, at this point, sorry, Mr. T, farmette,

47:06

miscibility, pharmaceuticals, the applicant. I think, as you noted, madam, a number of those issues were discussed yesterday, and in particular, the last comment that Mr. Onur has made about the

remedies available in the event of a breach of an exceedance of a limit. In addition, the point about the establishment of the ESG was also discussed yesterday. So I won't touch on that now. In relation to the requirement to consult, and whether it's, it's clear enough, we can we can certainly take that away and see if we can provide some further assurance. But again, the effect in our view of paragraph 22 subparagraph. Four is is a requirement to consult. And it then goes on to say to have due consideration to responses received as a result of that consultation.

47:58

And then on on paragraph 40, which was the penultimate point, Mr. Owen raised around the submission of a the failure to submit a level two plan or a mitigation plan, why that's not included, we can take that away and and give consideration to whether that should be added.

48:19

Thank you very much. And if we could add those points away as an action point that would be very useful. If I can turn to Mr. Western Smith, is there anything with regard to green Concord green controlled growth requirements that you want to raise that wasn't raised yesterday?

48:34

Just a couple of points. If I made mark question and Smith for Buckinghamshire Council,

48:41

the key drafting change that Buckinghamshire Council is seeking is the inclusion of Buckingham Council on the ESG that is a mechanical out turn of your view and our submissions made earlier in the week. So I need say no more on that.

48:59

The second point is I just endorse Mr. Owens submissions in relation to the clarity of the consultation obligations within

49:10

the GC G framework.

49:15

The third point is that we earlier in the process took a point in relation to what is requirement 24 and the frequency of reviews and I confirmed earlier in the week that we are not pursuing that point any further. And then the fourth point, strays slightly outside of GC CI on its own, but relates to the discharge requirements and requirements 35 Again, grateful for inclusion as a discretionary console T but a point we have made in the past is that we would be helpful to include

50:00

Do a minimum consultation period. We don't suggest that should change the specified period of eight weeks. But it would be helpful to ensure that console tees

50:13

had sufficient time to respond and didn't get a request for a consultation response towards the end of the eight week period. Those are the only points I wanted to raise. Thank you.

50:26

Thank you so much joy to come back on any of those points.

50:29

Thank you, Madam Tom Henderson, the applicant just on the on the final point about minimum consultation period? Yes, we were aware of the point and we will give it some further consideration. I think at a headline level we, we felt

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it was better to leave that within the discretion of the discharging authority and the authority being consulted. So to leave it flexible, depending on what the issue is, for instance, fairly minor issue could probably be discharged within within two weeks. But we'll take that away, give it some further consideration. It's not a point that we're particularly opposed to, and we understand why it's being raised.

51:02

Thank you, Mr. bassford. Has anything you want to raise with regards to drafting of the uncontrolled growth requirements that wasn't touched upon yesterday?

51:10

Not that we can't raise in writing, madam. How best on behalf of national highways. Thank you very much. Thank you,

51:17

sir. Anyone else wanting to raise anything with regards to green control grocery carts before I go to the two points that I wanted to pick up?

51:25

No. So as I said yesterday, appointed picked up that yesterday regarding condition 19 of the 19 million per passenger per annum consent requires the submission and approval of a carbon reduction strategy. Before the 18 million passenger per annum threshold is exceeded. The strategy was to be informed by the LL a 19 mppa outline as London Luton Airport 90 million passengers per annum outline carbon reduction plan which produced by the word group in May 2021. And then the carbon reduction strategies then to be reviewed in accordance with a number of provisions, including provision five, which was as and when new policies or targets are published, the Congress jet carbon reduction strategy shall be updated to reflect those new policies and targets. I think this was a point that was raised by Mr. Gertler was how was that captured potentially within the green control growth framework? Is that right, Mr. Gertler? I don't know if you had a chance to think about it overnight.

52:43

Thank you, Madam Tom Henderson, the applicant? I think we can answer in two parts. I'll deal with the outlined greenhouse gas Action Plan, which is relevant in this context. And Mr. De will talk about GCG.

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So as you'll be aware, we, one of our operational control documents is, as I say, a greenhouse gas action plan. And there is an outline plan in the application, I don't have the idea of the reference or it's a PP. 081. And at paragraph

53:11

4.5 point one of that document, I'll quote it because it's short. The greenhouse gas action plan will be reviewed and refreshed periodically brackets in line with UK, government carbon budget periods, and will show emissions across all aspects of aircraft movements, Operation service axes will be monitored, reported and managed, in line with existing legislation, policy and targets. So it does have that review mechanism as to say it's been set out to be aligned with UK carbon budget timescales. So happy to receive some comments further comments from looking better accounts. But I think, hope that's the answer in relation to that particular operational management plan. And then I'll pass to Mr. De to deal with GCG

53:48

and Mark day on behalf of the applicant. So the other requirements of condition 19, we believe are replicated broadly by green controlled growth. So I won't read all of them out. But essentially, it allows for annual independent verification scrutiny of greenhouse gas emissions that are reported annually by the airport. That's a mechanism which is included within green controlled growth. And then every five years or review and update and again, that five yearly review mechanism is included within the green control growth framework as well.

54:20

Thank you, I don't know if that answers your question, Mr. Gertler, and all whether you want to take away that away and then have a think about it and come back to us. Thank you, David gorilla for Luton Borough Council, I'll take it away and come back to you. Thank you. Thank you very much, if that could be an action point. And then the next question that we had with regard to green control growth, and it's sort of very neatly overlaps with the next item on the agenda, which is certified documents. Just a quick question, why is it only the green controls great, green controlled growth framework that is a certified document

55:04

Thank you, Madam Tommy, does the applicant, Mr. Day provide an answer on this one? Thank you,

55:10

Mark day on behalf of the applicant. So, effectively, we see there has been two green controlled growth documents, there's the explanatory notes, and there is the framework and the other documents are included as appendices to the framework. So the terms of reference and the monitoring plans. The explanatory note is was intended, largely for the purposes of this examination to explain the basis by which the green control growth proposals have been brought forward. And to provide some additional

context about how they would work. It wasn't intended to be a living document, the framework is intended to sort of be a stripped back version of that explanatory note with the things in it that are required to control the operation of green control growth in conjunction with those appendices. So that's the reason why we are proposing this the framework that becomes the certified document.

55:55

Would it be possible to merge those two documents so there is one, I mean, my having spent a lot of time reading the documents in last few weeks,

56:04

I found the explanatory note was very helpful to understand the framework. In a way the framework is almost less helpful because the there was two documents side by side.

56:15

Could the explanatory note become the framework document, because it gives you that wider context, and it's helpful to understand how the process is supposed to work?

56:26

I think we'll take that away and respond in writing, if that's okay. Thank you.

56:31

Thank you. So is there anyone else who wants to raise anything with regards to green Contra, green controlled growth requirements?

56:40

No. So I'm going to move on to item seven on the agenda, which is scheduled nine documents to be certified. I'd like to start by thanking the applicant for mending the layout, schedule nine, which now includes the full name of the documents, the applicants document reference in the version the document that needs to be certified. In my opinion, this makes the schedule far more legible and easier to navigate. And I'm hopefully that the discharging authorities feel the same when it comes to use it. However, I just want to clarify why the applicant has used their document referencing system rather than the exam might be referenced.

57:12

Thank you, Madam Tom Henderson to the applicant. It was simply because

57:16

we're not we're not clear that the exam library as a document will endure past the the end of the of the DCA process at some point documents are obviously taken down from the national infrastructure planning website. And therefore, we're not clear if we included a column of examination library references, how someone could use useful to use that reference because what we'll be certifying with the Secretary of State is our documents are example of the DCO, which obviously has the name of the document and our reference and the revision number which sits in the in the shedule. So those are the things will, which will endure. And we're not clear that the although the examination level is clearly very

helpful at this stage, will it actually serve a purpose in the long run? So it's simply it's simply that we don't have a particular objection to No, I mean, I suppose this is a question potentially for the joint house authorities who will be discharging requirements. It's back to that Planning Officers sat in a council office in Luton or North hearts or wherever looking at a discharge requirement requiring that the back document is the way that the document is to be certified as being set out going to enable them to do that.

58:27

Yes,

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Robbie own for the joint host local authorities, Mr. Gertler up, bring him in in a moment. But we've got a couple of comments on this schedule. It is schedules like schedule nine to D CEOs have evolved over the years. They never used to be there at all.

58:46

In our experience, this is certainly on the longer side, I think it's fair to say, if not the longest I've ever seen I've ever seen. And I think I think I think it would actually help just putting ourselves in the position of that planning officer. A few points I wanted to make the first just returning to what Mr. Henderson has said. My understanding is the practice now is after five years, all documents are taken off the planning directors Website Other than the decision letter, the DCO, and possibly the expansion memorandum.

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Therefore, it's clearly going to be necessary for the documents that are certified to be made available

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online to planning offices, we're imagining that we're putting ourselves in the in the shoes of

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the other big point I wanted to make is that

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there's no purpose serves in just certifying documents, they're certified for a reason. And these schedules have become a bit of a kitchen sink. And

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I think what would be very helpful is if the applicant would be prepared to add a further column to this schedule, setting out for each of the document for each of the documents listed. What are the relevant

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some provisions of the order in terms of operative provisions that mean that the documents should be certified so that everyone knows what that operative provision is referring to in terms of which version the document because at the moment, this isn't a very helpful list.

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I think it would, if the applicant were had to, I appreciate it quite a bit of work. If the applicant were prepared to say, for each of these documents, what is the relevant provision of the order, which is determining why the document is in the in the shedule, in the first place, that would be very helpful to those seeking to work with this order, in terms of discharge of requirements, amongst other things. And I think it might also help to

1:00:43

maybe break the table off a little bit with some sub headings in in italics to sort of set out different individual parts of the shedule. But it at the moment, I'm just a bit worried it's not going to be particularly user friendly to our planning off to the to the Planning Officers. And given particularly its length, and complexity, I think it might help to adjust the layout in the way I've just suggested. Thank you.

1:01:11

Thank you, if I can come back on a point of clarification for

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the parties in the room. I've just been advised that you are correct. We keep them five years, we only keep the recommendation report appendices and Secretary of State's decision after that point in time.

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So taking on board, the concerns

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that have been raised regarding the usability of this, I mean, there's a two fold thing. First of all, should the document, be there and listed. And

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we have sort of swung, as Mr. Owens has said the way from not having a schedule nine to now having a very detailed and lengthy schedule nine. Although I would point out to Mr. Owen, this is quite a big application, which is probably why it's quite a lot of certified documents.

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And just look at how that works. And obviously, right Right, right at the back of the recommended DCO is the details of where the plan certified plans will be held.

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And going back to the point that I raised about ensuring that it's usable by the people who need to discharge the requirements, if they're having to dip into the certified documents held at Luton risings offices, and you are going to use your referencing system, then it may be that that is the most appropriate referencing system to enable somebody to navigate the table. But we just need that explanation, that audit trail within the examination. So Mr. Henderson

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Thank you, Madam Tom Henderson for the applicant, it probably won't surprise you to hear that I don't entirely agree with the characterization Mr. Owen gave the the shedule.

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All of these docket we haven't we're not certifying the entire application, you know, every single document in this list is referenced somewhere else in the draft development consent order. So it has a in order to interpret the order properly. At some point, depending on the provision you're looking at, you will need to reference one of these documents. So we've been very clear about that we aren't we are not just certifying the application for the sake of it. And really the length, the length of the table actually comes back to the point that the most of these documents are in the environmental statement, which is inevitably an extremely long document, we do not have a single document, which is the yes, it because of its size, it has to be broken down into

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a substantial number of separate components. And inevitably, in this process, a number of those components are going through different revisions. And that's why the document is the length that it is. And I think I'd actually paint the fact that we're certifying the ies and securing it as a virtue. We've said in numerous parts of this application, that we commit to living within the environmental envelope of the

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of the assessment. That's that's a common complaint of events and publications that they're not clear on that point. So we think this is actually a good thing that we're that we're doing this, I think on the suggestion of a fourth column,

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I can see the benefit of that, I just think it could be an unnecessarily onerous exercise, because a number of the interest will just say all provisions, because some of these elements do relate to a single provision, but many of them if you if you apply it holistically with you know, the works plans are relevant to numerous provisions. And that would be an exercise of, I'm not sure how far we'd get with exercise if we just ended up saying all provisions or provisions. So I'm not particularly I think, inclined to request the discussion short, I think if you could take it away and look at the practicability of it. I think it'd be welcomed if it can be included if it's usable. But if literally all it's gonna say is all provision to there's no point in terms of doing that because it's not actually serving any purpose. So at the risk of incurring Mr. Owens Roth, I'm just going to ask if there's any documents that people think are missing from the list. Mr. Owens, Madam not so much on missing

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I've it's very helpful what Mr. Henderson said,

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I'm not sure that there will be that many sort of war provisions type entries. But if he would take away and consider what I've said, I'll be grateful. The point I wanted to raise was his reference to living within the raw metal envelope of the project. And that, of course, is why typically the ES is certified. I would ask Mr. Andersen or the applicant to consider whether the draft DCO does actually achieve that. I've

just I haven't done an exhaustive search. But I've just noted for example, Article four, which says that the undertaker made anytime maintain the authorised development except to the extent that this order would have been made under it provides otherwise, if you look at the definition of maintain an Article Two is very broad, and it includes repairing, adjusting alteration route removing, refurbish and replace. And it's it's common in DCs, it may be that dissenters will say what it's dealt with elsewhere. But it's common in DC O's, in the maintenance article to say, in a second limb of that article, however, nothing can be done to maintain that would in effect, take you outside the impacts identified in the barbitol statement, which is hence why it's certified. And I think so, if the applicant could consider whether the order does achieve that, securing within the environmental envelope, which is the welcomed intention, I'd be grateful. Thank you. If I have to take that away.

1:06:25

Thank you, Madam telemedicine, the applicant? Yes, I can take that out. I mean, maybe looking at the wrong provision or not understanding the point. But the definition of maintain is is tied to not giving rise to materially new or different effects, as compared to those reporting the environmental statement. So does it already achieve

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that purpose, we've used the sort of well established form of wording.

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So if Mr. Owens may wants to come back on that, if he needs to

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that? Well, as I said,

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there are a number of different ways of achieving that objective is often done in the article of maintenance. But as we send us some points out, it may be that the alternative formulation, aeration to maintenance achieves that, I would just ask him to review because that that tying back to the original statement, because in DC is not just in relation to maintenance, but for example, the ancillary works powers. And I think we just like to be assured that in every case there is that tie back to that. Yes. Thank you. Believe me, Mr. Owens. So do we. Right. Does anyone else want to raise anything with regards to

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whether there should be any documents listed in assert in in

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schedule nine that currently aren't there? I know, it's a question I've asked. But obviously, as has been highlighted, it is quite an important schedule because obviously it is that reference point.

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Mr. Westerman Smith, I can see your finger hovering. No, it's not. Thank you.

1:07:56

Thank you. In that case, I'm going to come on to Item eight consents licences and other agreements.

1:08:02

I want to start by asking the applicant or possibly Latin American Council for an update on progress for completing the section 106 agreement and the timescale for this been completed.

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And as a follow up to that, is it just one section 106? Or are there more? Is there more than one? What I'm very concerned about is that throughout the examinations, so far, there's been lots and lots of references to Don't worry, it's been captured under Section 106. This has been dealt with in Section 106. We have not even had sight of a draft 106 At this point in time, and we're very closely under the examination. And if you are relying on mitigation to be delivered through that section 106. I need to see it. So if we can start off by just asking where are you with section 106? And clarification, is it just the one or is it multiple?

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Like I first met him,

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I told her listen to the applicant.

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So as much as standards it's one document with multiple signatories.

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Clear clearly that's

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a matter for ongoing negotiation, a negotiation sorry.

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There may be a necessity or a need to,

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to enter into multiple agreements, but at this stage has been negotiated as one as one document.

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I can list out the summary of the obligations that are contained within it, if that would be helpful at this stage or possibly provide you with a written update. So any more than is in the planning statement, which is section 5.85006, which contains very high list of possible contributions. Tom Henderson The applicant has moved on I could list probably about a dozen elements. Now, I think if you could maybe submit that in writing rather than reading it out.

1:10:01

But I suppose what I'm coming on to is paragraph 5.8. Point six makes it very clear that the obligations to become are to be considered alongside the DCA requirements.

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And for the avoidance of doubt, they will not be replicated in the DCO as requirements. So

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I don't know what's in that 106. And obviously, it may be that the reason it's not we haven't got a copy of it signed is it's still up for debate. And so there may be a difference of opinions as to whether or not it is or isn't delivering the mitigation. So, I mean, would it be possible maybe to have a draft with one or six separated or not Tom Edison's the applicant, I think we're slightly slightly premature to be submitting a draft that would hope the local authorities would would agree with that.

1:10:45

We've provided two terms of the documents that local authorities, the draft is currently with them for comments, and I know they've got it under review. And we've also shared with them a programme for completion of the section 106 agreement. By the deadline you set, which I think from memory was the 30th of January. And as Mrs. Clinton said early in the week, it's very much our intention to work positively to secure the various obligations which will set out in writing by by agreement, but we are equally cognizant of your direction that you need to be satisfied essential mitigation

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is secured by the end of the examination. And we are therefore developing in parallel, a approach by which we could secure the matters unilaterally. So that could either be by way of a unilateral undertaking.

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Or it could be the case that certain of the measures are brought into the development consent order. So for instance,

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a key element of the section 106 is obviously the compensation policy scheme was installation

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that's amenable to being secure through requirement if if that's what we needed to do.

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But our preference is to secure it through the section 106 agreement, because of the

1:12:01

the ability that that mechanism allows for that to be, you know, again, it's Mr. De, use the term a living document, and it can can evolve through that process. So we, I want to assure you, we do have a plan,

we are working positively to secure these matters by agreement, we'll set those out. But we also are cognizant of the timescales we're working to and need to secure these one way or the other. Okay, so to move this forward, I think what will be very useful given you, you're unsure you can provide them with a draft is a document outlining in more detail, which is sort of what we touched upon what it will contain.

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And

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if you if I know it's the big ask, but if that can be maybe provided at deadline six, with an action point that the local authorities then have the opportunity to come back and say where they're at with regards to that. So I have an understanding of if there's a difference of opinion over something that's in it, what what those items are and where they are. And then underneath that, obviously, you've talked about looking at requirements, whether things can be secured by requirements. And often things that are sometimes in a traditional section on a six attach for planning permission, like employment and training and skills, strategy stuff are requirements. Rather than being dealt with through section 106. I'm unsure, we start to get into a bit of a grey area where it's starting to be financial contributions, which sort of made me sucking my breath when you mentioned that you might put the compensation strategy in there. But again, if you are going to do that, then I need to have some legal understanding as to how that works from a requirement point of view as to whether or not it's possible.

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The I picked up the point that Mr. Clinton had made earlier in the week that if it's can't be delivered through a section 106 agreement, you may have a unilateral undertaking. The issue with a unilateral undertaking is it's great. There is mitigation secured, the problem that I have is it's normally submitted because there's a disagreement between the parties as to what's going forward means sometimes it's just to expedite the process. But sometimes it's because you can't reach agreement on the 106. And then the problem I have is that the unilateral undertaking that's in front of me, particularly if it comes in very late in the day, I haven't had the opportunity for the other party to say, well, actually, you know, we're not happy with that. So again, when it comes to our considering of it, it, I think that Well, I would be interested to know your opinion as to what wait could be afforded to a unilateral undertaking over a section 106 if it's because of disagreement between the parties.

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Thank you, Madam Tom Henderson for the applicant. I mean, let's take the let's take the example of the

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of the of the compensation policy document. I mean, that that document essentially operates one way it's an obligation on the on the Undertaker, I appreciate that, you know, still a matter for discussion under this examination, but, but as a point of principle.

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I think you could attach equal weight to it if it was secured unilaterally

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as opposed to being secured in an agreement.

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and whether whether the other parties agree with what was in the document is obviously a slightly different issue. But I don't think it affects the way that you could attach to it. I think from your purpose, your purpose is you need to be satisfied that the document is secure. And I think

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one of the challenges of the DCO process is that

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if you'd like this just has come down when the examination is finished, we can't continue to negotiate the agreement, subject to subject, so So the issue that we may have is that we may be agreed on points of principle, but governance processes might mean that the documents can't be signed by the date that you need them to be signed by. So there's a there's a few things to management amongst this. I think what

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there are aspects of the section 106 Is that we know knowledge needs to be need to be built out further. And that that's that's for us to do. The principles of what we're proposing to put in the section 106 agreement are with the host authorities. And we look forward to hearing whether they agree with those perhaps that might be possible by deadline six. So we're all clear on what what goes in the document. And then it's a question of, of the the detail of the drafting that would would certainly take things forward. And we'll leave that to them. But we can certainly by by deadline, six give you an update from our perspective, and what we see is less appreciated. I mean, I do recognise there is that tension with obviously trying to get it delivered. And particularly that's my one of the reasons I asked is it one document or multiple documents? Because obviously, the bigger the document and the more signatories, the slower it gets in terms of getting agreed and getting signed off. Do any of the local authorities want to come back whether it's the joint host authorities or Buckinghamshire Council on this matter, Mr. Owens? Thank you, Robin, for the joint host local authorities.

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I can go with what Mr. Henderson has been saying we have made good progress. I think it's fair to say since the last round of hearings, we've had a couple of drafts of the agreement through over the last six weeks or so.

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Our focus is very much on

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agreeing the section 106 agreement by the end of the examination, and we have a timetable prepared by the applicant that was sent to us on Wednesday that we

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wanted to agree so that we all know what how we how we are going to get to the end of January. Because we recognise entirely that that is what would most assists you. We don't really want to be in the unilateral undertaking territory at all. And whilst I don't think there will be anything to prevent us from continuing beyond the examination, that's clearly not at all desirable, but it does happen sometimes. So our focus is you can give you our commitment that we're working hard to

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get there, there's still a lot to do. And I think we can probably improve on what Mr. Henson was saying by I would think we could agree by deadline six, a joint statement to you that sets out the the heads of terms for the 106. Hopefully, I think, on a totally agreed basis, if there are some issues that we say, are still being discussed, and when we can obviously indicate that but I would hope that that might be more helpful to you than a

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it would be very helpful because as I say, the sort of reoccurring theme throughout these hearings, and in terms of documents being submitted in is that, don't worry, it's coming in, it's been dealt with by section one to six. And I have no detail, apart from what's in the planning statement, which I think covers five or six things as to what is in that section 106. So to reassure me, it would be useful to understand exactly sort of in a bit more detail what that is and then the aspiration obviously to get it completed by the end of the examination. Mr. Gert, I can see you've got your hand up. Yes, David Gertler, Luton Borough Council, it's not a long document. That's the first thing and then secondly, the biggest problem is probably what Mr. Henderson's outlined will be the signatory process with the local authority and the delegation of authority.

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So on that point, just on a practical matter,

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I've highlighted the concerns about the use of unlike unilateral undertaking, and I realised that it may well be a last resort. However, if the unilateral undertaking it if it has to go down the route of a unilateral undertaking, because it's just simply not possible to get all the signatories and the ceiling and everything done in time to complete the 106. Would it be possible to have some kind of statement from the people who would be signatories that they are happy with it? Because as I say, the problem that we have as inspectors is when we're presented with a unilateral undertaking, that's very much the applicant's take on things. So I need to be reassured that you are confident that those elements that you are concerned about in it, and then obviously, I can give much more weighting to that when I consider that in the report. Mr.

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Robbie Onan for the joint house local authorities, Madam, I'm sure we can do something along those lines. If we can't present you with a fully completed signed document. Would that be a way forward? Maybe Mr. Henderson Thank you Madam Chair.

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matters the applicant? Yes. I mean, we were happy to work with the authorities next week to try and get this disjoint position statement. As I say, we have, you know, appreciate your you're blind to it. But we are we have made progress there are. I think we're pretty much there on what, what's in there. And it is it is a move forward from what you've seen in the application. So for instance, we talked about things like the residual impact fund for the trimmer. That's the sort of thing that's now sitting in a section 106 agreement. Could I just take this opportunity as well, just to, we had a discussion earlier about the community fund that it is a little bit confused, I can give you hopefully, all a bit more clarity for where that stands. So I think

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we can put the complexity or the confusion comes because we probably need to change the names of some of these funds, because the current airport permission section 106 agreement and including p 19. Has a committee operators community fund. That community fund

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is obviously meant for the operator at the moment, it also receives things like track violation fines, we are

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intending to roll over a community fund into the DCO, section 106 to serve a similar function. And that's a matter that's under negotiation. That community fund is different from community arrest, which is the measure where we contribute one pound for every passenger over the permitted cap and in answer to your question, seeming p 19. is implemented. It will be one passenger over 19 million, not the Wednesday's 80 million. So I hope that clears that up. And I think there's probably a need for us to consider a name change to the community fund. So it's, it's not confusing. Thank you. Thank you.

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I was just going to come on because obviously if this item is consents and licences and other agreements, and obviously we focus very much on the section 106 agreement, but I don't want to forget the other licences and agreements. As Oh 70 consents and agreements position statement sets out the consents licences and agreements that will be required to construct the proposed development. We heard in issue specific hearing aid about the progress with regard to the environmental permits in relation quiet in relation to water are any other permits that the examining authority needs to be aware of that would need to be agreed at this stage in the process? And does this document need to be updated?

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Thank you, madam. Tom Henderson, the applicant, I would need to take instructions on that. So is that a point that we can take away we recognise that there will be a need to update that document or don't

have the relevant if you could do so at the moment. It's still the document was submitted originally with the application. So that's some time ago now, Nikki?

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And then just clarify whether any of those needs to be in place before?

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Yes, we can certainly do that. I was just going to suggest

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in terms of a documentary update, that would probably be easier to do by deadlines seven if that's acceptable. Thank you. I'm not overly worried about this. It's just one that we mustn't keep. take our eye off. That's all. Thanks. Thank you. So can I just check whether there's anything else any moments raised with regards to this agenda item?

1:23:00

Mr. Westman, Smith, Mark Westman and Smith for Buckinghamshire Council. Just going back to the One A six obviously, we're in a slightly different position, we're not an enforcing authority in the terms of what a six and say not a proposed signatory to it. In consequence, we haven't seen it. But there are elements of it that are of real interest, for example, the securing of the employment and training strategy. And insofar as we've seen the heads of terms in the planning statement, that indicates that some of the funding elements for green control growth will be sitting within that obligation. So it is an important document. And it would be helpful to us with an undertaking from ourselves not to offer detailed drafting points. But it would be helpful to us to see that documents and say I just asked through you and open whether the applicant would be prepared to share it with us at this stage said Mr. Henderson could potentially take that away and think about it and advice. Buckinghamshire counsel whether or not that's possible, but obviously, if I could ask you if the document I've just talked about that provides that if there's any comments on that, if you could then help us both find out what's absolutely that document is going to be incredibly helpful and will get us a long way. But it would just help us out a little bit more if we could see the draft as well. Mr. Henson, Schwartz respond. Telemedicine and the applicant? Yes, we will take that point away and deal with it in our current engagement with with the Council. Thank you.

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Okay, if there's no other item, nothing else and then once raised with regards to this agenda item, I propose to move on to items nine and 10, which is action points in any other business.

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We haven't been notified that anyone wishes to raise any other business but before we close can I just take that there any other matters that anyone wants to raise on this? And especially specific hearing so applicant Mr. Henderson? Thank you, madam. There was just one one point that we wanted to check which was was

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It was to the general point for this week we've talked about proximity of deadlines six and that I think we had our protocol off its deadline six unless we say otherwise or tell you we've been working to

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identify which actions we think we can deliver by deadline, six or not. And I think it's probably at the moment around 10, where we would like your permission to move into deadline seven. And I think, clearly, you need to see what those actions are. But from our perspective,

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given the shortness of time,

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we need to sort of get on with this, those documents if we're going to submit them. So I suppose it was I wondered if you could give a sort of general steer as to whether your content for the ones that we propose to roll to Deadline seven, because

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we can, we can obviously prioritise the deadline six months from today,

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rather than trying to if he's got that list to hand, then we can maybe, at least if we can, we'll look, we'll see what we can do. Certainly, you do have the advantage of having the whole panel here. So I'm not making decisions on my colleagues behalf.

1:26:02

Well, I don't have the list to hand and I think it would take too long to read them up. I'm sure we can email them to the case officer, if you can email and police officer, we will. We are aware that obviously is a very short turnaround to Deadline six. And we really do appreciate you doing everything that you can to deliver those documents, because obviously, as you've pointed out, the next one is deadline, seven, which is in January, and we've got written questions. So it's, you know, it's an opportunity that we have to have as much information as we have at this point in time enables us to make those as efficient as possible. So yes, if you email that to them, because I'm actually just about to come on to the point about action points, because we have hopefully, published night eight or nine.

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So eight is up. And then I think nine will be up before the end of today. And then this one's from today. So any other business before I move on to my any other business. So

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I'd like to remind people that post here and documents should be submitted on or before deadline six, which is Friday the eighth of December 2023.

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I'm happy to advise that recording of this hearing will be put on the inspectorates website as soon as possible. I'd just like to let everyone know that the examining authority have undertaken a number of unaccompanied and access require site visits during this week, including a visit to St Paul's Walden, Barry. Luton who visits to make observations on traffic levels on various parts of the road network, a visit to observe a fire training event. And we also went out to look at the Children's AONB. So national landscape at night. Sight notes of these visits will be published on the project page of national infrastructure website in the next week. I can confirm as I just mentioned earlier that the action points for the apron floor hearing compulsory acquisition hearing to issue specific hearing seven an issue specific hearing aid have been published on the project page of the national infrastructure website. The action points for issue specific hearing nine and today's hearing will be published as soon as possible after close the hearing. Just because I recognise that a lot of the action points and that the deadline to respond is fairly short. However, I would ask that wherever possible, you try to submit the information requested as this will help inform the examining authorities further written questions. As you've just mentioned, Mr. Humphries, Mr. Sorry, Mr. Henderson. Mr. Humphries agreed to deadlines six many of these action points, but on the proviso that the applicant could review them. If the applicant is going to seek to alter any of the deadlines set out then obviously, as we just highlighted, it would be if we could have that information as soon as possible. And then we can try and agree as soon as possible. And we're aware of it when we're drafting our further questions. And on that point, I can confirm that the examining authority will be issuing a set of further written questions on Friday the 15th of December 2023. I can also confirm that the examining authority does not considered that report on the implications for European sites, or Reese would be required for this project. And so we will not be issuing one. Although I'm sure I don't need to because it's a date that's marked in your diaries with a big red pen, I'd like to take this opportunity to remind you that examination is due to close on the 10th of February 2024. That's 10 weeks away, and we have a lot of things to do.

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The XA will not be able to take into account any information submitted at the 10th of February and as a result, this means there is very limited time left within the examination for issues to be resolved. I therefore, urge all parties to do everything they can to ensure that I have provided all the information that the examining authority will need to enable us to make our report to the Secretary of State. Finally, this is the last statement at timetables event for this examination. So I just like to take a moment to thank everyone who has participated in the earlier in this and earlier events. I particularly wanted to highlight the examining authorities appreciation to all those interested parties who've participated in examined

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addition alongside that other commitments, I'd also like to extend our thanks to production 78 for managing the audiovisual side of things and the support provided by the case team both here at the event and those back in Bristol. So the time is now 1240 and this issue specific hearing on the draft developed consent order for the proposed London Luton Airport Expansion is now closed