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January 2024

London Luton Airport Expansion

Planning Inspectorate Scheme Ref: TR020001

Volume 8 Additional Submissions (Examination)

8.162 Applicant's Response to Comments on the Draft Development Consent Order at Deadline 6

Infrastructure Planning (Examination Procedure) Rules 2010

Application Document Ref: TR020001/APP/8.162

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London Luton Airport Expansion Development Consent Order 202x

8.162 APPLICANT'S RESPONSE TO COMMENTS ON THE DRAFT DEVELOPMENT CONSENT ORDER AT DEADLINE 6

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APPLICANT'S RESPONSE TO COMMENTS ON THE DRAFT DEVELOPMENT CONSENT ORDER AT DEADLINE 6

Table 1.1 Applicant's response to comments on the Draft Development Consent Order at Deadline 6

I.D	Deadline 6 submission (Verbatim)	Luton Rising's Response
Affinity Water Limited [REP6-120]		
1	Affinity Water considers Schedule 2 of the draft DCO should include a requirement that reflects the Applicant's commitment to not increase its water demand above its water usage levels in 2019	As regards use of water during construction — • The Applicant's revised **Code of Construction Practice (CoCP) [REP6-003]**, submitted at Deadline 6, contains modifications for Affinity Water's (AW) benefit in respect of use of water during construction: the Construction Surface Water Management Strategy (CSWMS), to prepared in accordance with paragraph 7(2)(c) of Part 2 of Schedule 2 to the Order, is listed in section 2 of the CoCP as a document to be approved by the relevant planning authority. Reference has been added in CoCP para 2.1.6 for the relevant planning authority to consult relevant statutory undertakers (which would include Affinity Water) as part of this approval process. • Para. 20.13.1 of **Chapter 20 Water Resources and Flood Risk** of the **Environmental Statement (ES) [REP4-009]** states: *"The CoCP identifies the requirement for the lead contractor to outline a monitoring regime for surface water and groundwater quality, groundwater levels and water consumption during construction. This would ensure that pollution prevention measures are installed and operated effectively and, if necessary, the lead contractor can implement additional measures to mitigate any potential incidents."* Para. 20.13.3 refers to agreeing a water use monitoring methodology with Affinity Water. Paragraph 17.6.7 of the **CoCP [REP6-003]** makes related provision: *"As part of the water use profiling exercise, the lead contractor will liaise with Affinity Water Ltd. The volumes of water used will be agreed with Affinity Water Ltd and monitored."* As regards water use during the operation, use and maintenance of the authorised development, the **Design Principles**, an updated version of which was submitted at Deadline 7 **[TR020001/APP/7.09]** require the incorporation of water efficiency measures to limit water use: • DDS.05 states: *"The detailed design will incorporate water efficiency measures as detailed in SUS.15."* • DDS.06 to DDS.10 specify further water efficiency measures to be incorporated. • SUS.15 states: *"Detailed design will include such water efficiency measures as are necessary, so far as reasonably practicable, to maintain water demand (excluding construction water demand) at the 2019 consumption baseline. Rainwater harvesting and greywater re-use solutions will be incorporated in detailed designs. Potable water efficiency measures will also be incorporated in the design of buildings, in order to minimise potable water demand from the statutory undertaker."* The 2019 consumption baseline 1 means 4.2 litres per second in respect of water demand for the airport terminals and 3.3 litres per second in respect of water demand for the airport non-terminals, as outlined in the Water Cycle Strategy (**Appendix 20.5** of the **ES [REP4-033]**). The Applicant is in discussion with AW about further contractual commitments regarding water use during the operation, use and maintenance of the authorised development.
2	The Applicant's proposed measures to manage water demand, as outlined in the Design Principles are not adequate as they do not address water demand during construction and they are inconsistent with Affinity Water's statutory duties;	See response to I.D1.

I.D	Deadline 6 submission (Verbatim)	Luton Rising's Response
3	The draft DCO needs to be amended to incorporate the role of Affinity Water in the preparation and approval of various management documentation (which are outlined in paragraph 3.14 [Q7] below)	The Applicant has incorporated the following changes into the **Draft DCO [TR020001/APP/2.01]** submitted at Deadline 7 • Requirement 11 (Contaminated land and groundwater) to add *"the relevant water undertaker"* (AW and Thames Water Utilities Limited (TWUL)) as a body to be notified and/or consulted, in addition to the Environment Agency, in respect of contamination events, and to be consulted on remediation and verification plans and reports. • Requirement 12 (Surface and foul water drainage), which already requires the Applicant to consult with *"the relevant water and sewerage undertakers"*, has been amended to specify the contents of the surface and foul water drainage plan to be produced. • Requirement 16 (Remediation of Former Eaton Green Landfill) has been amended to require the relevant planning authority (as approving body) to consult with *"the relevant water undertaker"* in addition to the Environment Agency.
4	Affinity Water requires monitoring data in relation to the Applicant's water usage throughout construction, use, operation and maintenance of the Project, as well as monitoring data in relation to the management plans outlined in paragraph 3.14 below;	Para. 20.13.3 of **Chapter 20 Water Resources and Flood Risk** of the **ES [REP4-009]** refers to agreeing a water use monitoring methodology with AW. Paragraph 17.6.7 of the **CoCP [REP6-003]** makes related provision: *"As part of the water use profiling exercise, the lead contractor will liaise with Affinity Water Ltd. The volumes of water used will be agreed with Affinity Water Ltd and monitored."* Please see response I.D 3 above with regards to Requirement 12 (Surface and foul water drainage), which already requires the Applicant to consult with "the relevant water and sewerage undertakers", and has been amended in the version of the Draft DCO submitted at Deadline 7 to specify the contents of the surface and foul water drainage plan to be produced. The Applicant is in discussion with AW about further contractual commitments regarding monitoring of water use in relation to the management plans.
5	The Water Resources and Flood Risk is deficient as it is unclear how the obligations included in Chapter 20.13 of that document are secured by the draft DCO. The Water Resources and Flood Risk also outlines how the methodology for monitoring of surface water and groundwater quality will be approved. Affinity Water should also have an approval role in approving this methodology as it involves a discharge to the underlying aquifer, which could be detrimental to the treatment of potable water;	Para. 20.13.2 of **Chapter 20 Water Resources and Flood Risk** of the **ES [REP4-009]** states *"The monitoring of surface water and groundwater quality will be completed in line with a methodology agreed by the Environment Agency and Thames Water (during permitting processes) as runoff from the Proposed Development will be discharged to the underlying aquifer and the Thames Water network."* The **CoCP [REP6-003]**, para. 18.8.2, as updated at Deadline 6, now requires the lead contractor, as part of that permitting process, to consult the Environment Agency and the relevant water and sewerage undertakers (i.e. Affinity Water and TWUL) regarding the water quality, flow and level monitoring to be undertaken for watercourses and groundwater that will be affected by construction works or the discharge of surface water run-off. The Applicant does not agree, however, that Affinity Water should have an approval role – that role is exercised, through the permitting processes, by the EA and TWUL. Para. 20.13.3 of **Chapter 20 Water Resources and Flood Risk** of the **ES [REP4-009]** refers to agreeing a water use monitoring methodology with AW. Paragraph 17.6.7 of the **CoCP [REP6-003]** makes related provision: *"As part of the water use profiling exercise, the lead contractor will liaise with Affinity Water Ltd. The volumes of water used will be agreed with Affinity Water Ltd and monitored."*
6	Affinity Water is concerned with the 'deemed approval' mechanism in paragraph 35(3) of Schedule 2 of the draft DCO, particularly where Affinity Water does not have any control over the discharging authority's determination of applications under paragraph 35.	See response to I.D10.

I.D	Deadline 6 submission (Verbatim)	Luton Rising's Response
7	Based on the documents that are currently secured by Schedule 2 of the draft DCO, Affinity Water is seeking a consultation role in relation to the following documents: 1. each construction surface water management strategy, prepared in accordance with paragraph 7(2)(c) of Part 2 of Schedule 2 to the draft DCO; 2. each pollution incident control plan, prepared in accordance with paragraph 7(2)(g) of Part 2 of Schedule 2 to the draft DCO; 3. each dust management plan, prepared in accordance with paragraph 7(2)(h) of Part 2 of Schedule 2 to the draft DCO; 4. any written scheme and programme prepared in accordance with paragraph 11(2) of Part 2 of Schedule 2 to the draft DCO; 5. any verification plan prepared in accordance with paragraph 11(4) of Part 2 of Schedule 2 to the draft DCO; 6. any verification report prepared in accordance with paragraph 11(5) of Part 2 of Schedule 2 to the draft DCO and 7. the remediation strategy prepared in accordance with paragraph 16 of Part 2 of Schedule 2 to the draft DCO.	The Applicant has made the following changes in this regard: 1. Change made to the **CoCP [REP6-003]** at Deadline 6. The Construction Surface Water Management Strategy (CSWMS) is listed in section 2 of the **CoCP [REP6-003]** as a document to be approved by the relevant local planning authority. Reference has been added in para 2.1.6 for the relevant planning authority to consult relevant statutory undertakers (which would include AW) as part of this approval process. In addition, AW has been specifically named as a consultee on the lead contractor's plan for monitoring watercourses and groundwater in para 18.8.5 of the CoCP. 2. Change made to the **CoCP [REP6-003]** at Deadline 6. AW has been specifically named as a consultee to the Pollution Incident Control Plan in CoCP para 18.8.5. Section 6.3.2 also now refers to *"relevant water and sewerage undertakers"* as parties to be notified of pollution incidents. Para 18.1.4 already referred to *"appropriate approval for works from the relevant regulatory body or statutory undertaker which could affect any surface water or groundwater resource"*. 3. The outline for the Dust Management Plan, as detailed under para 8.1.2 of the **CoCP [REP6-003]** does not include reference to water efficiency measures. Water efficiency measures are however referred to in the Site Management subsection under Air Quality in the CoCP, and a cross-reference has also been included there to link this to the more detailed measures and practices set out in Section 17.6 of the CoCP on Water Efficiency, which specifically includes focus on water use for dust suppression. This section already includes a requirement for the lead contractor to liaise with AW on water use, including reaching agreement on the volumes of water to be used and the monitoring of this. 4, 5 and 6. Requirement 11 (Contaminated land and groundwater) has been amended in the version of the Draft DCO submitted at Deadline 7 to add *"the relevant water undertaker"* (AW and TWUL) as a body to be notified and/or consulted, in addition to the Environment Agency, in respect of contamination events, and to be consulted on remediation and verification plans and reports. 7. Requirement 16 (Remediation of Former Eaton Green Landfill) has been amended to require the relevant planning authority (as approving body) to consult with *"the relevant water undertaker"* in addition to the Environment Agency.
8	Affinity Water also requests that paragraph 11(1) of Part 2 of Schedule 2 to the draft DCO is amended so that Affinity Water is included in the list of bodies that are notified if any land affected by contamination is found, including groundwater. In this occurrence, Affinity Water also requires the Applicant to provide Affinity Water with any information it reasonably requests that relates to the relevant contaminated land.	See response to I.D7, at points 4, 5 and 6.
9	If Affinity Water is included as a required consultee during the preparation of the above documents, the draft DCO must be updated to ensure the relevant planning authority is aware of the parties it must consult with before approving the relevant documents.	See responses to I.D1, I.D3 and I.D7. AW, as a relevant water undertaker, would be a specified consultee in the Order and/or in the CoCP.
10	Schedule 2 paragraph 35(3) of the draft DCO includes a deemed approval mechanism for applications made under paragraph 35(1). Affinity Water considers the risk associated with the implementation of, inter alia, management plans without Affinity Water's consultation, is	See responses to I.D1, I.D3 and I.D7 as regards AW role as consultee on the various management plans. Schedule 2, Part 5 (Requirements 34 to 37) (Procedure for Discharge of Requirements) provides at para. 35(3) that a *"discharging authority"* (a body from whom a consent, approval or agreement is required under Parts 1, 2 or 4 of

I.D	Deadline 6 submission (Verbatim)	Luton Rising's Response
	disproportionate to the potential delay in obtaining approval from the discharging authority. This is particularly an issue as Affinity Water does not have an approval role in respect of these applications. Accordingly, Affinity Water's ability to comment on these applications is reliant on the discharging authority responding to, and determining, an application within the prescribed period. Affinity Water therefore seeks paragraph 35(3) to either be removed from the draft DCO, or an exception be included that excludes applications where Affinity Water is a consultee. Affinity Water has raised this issue with the Applicant and is yet to receive a response.	Schedule 2) who does not determine an application within the specified period of eight weeks is to be taken to have granted all parts of the application (without any condition or qualification at the end of that period). As stated in the **Explanatory Memorandum [TR020001/APP/2.02]**, Requirements 34, 35 and 36 provide a clear procedure for the discharge of requirements in Part 1, Part 2 and Part 4 of Schedule 2 by the discharging authority. It sets out clear time limits for decisions to be made and makes provision for circumstances where the discharging authority may undertake consultation with specified bodies, and may require further information to be provided in relation to an application for the discharge of a requirement. These time limits are considered necessary to remove the possibility for delay and provide certainty that the authorised development can be delivered by the undertaker in a timely fashion. As a Nationally Significant Infrastructure Project (NSIP), the authorised development should not be at risk of being held up due to a failure to respond to an application for consent/approval. Deemed consent provisions are well-precedented for this reason. Part 5 of Schedule 2 as drafted reflects the discharge of requirements provisions approved in a range of recent made DCOs, including The Southampton to London Pipeline Development Consent Order 2020, The Reinforcement to the North Shropshire Electricity Distribution Network Order 2020, the Cleve Hill Solar Park Order 2020 and the Riverside Energy Park Order 2020.
11	Further to Affinity Water's concerns regarding monitoring that were outlined in its Written Representation, Affinity Water requires the Applicant to provide monitoring data on a quarterly basis, with the opportunity to receive additional data in the event the monitoring results provided by the Applicant are a concern. The monitoring data must include the water use for the Project, as well as the water use for the operation of the Luton Airport, for each relevant period. The provision of this data will enable Affinity Water to monitor the Applicant's compliance with its commitments regarding water usage. This is particularly important given the water scarcity concerns raised above.	See response to I.D4.
12	Affinity Water also requires the Applicant to provide Affinity Water with monitoring data (including interpretative reports) in relation to the management plans outlined in paragraph 3.14 above, as well as the surface and foul water drainage plan, prepared in accordance with paragraph 12 of Part 2 of Schedule 2 to the draft DCO. The provision of this data will enable Affinity Water to monitor the Applicant's compliance with the relevant management plans and minimise the risk of contamination. Monitoring ground water levels will also support the review and verification of the Project design, which is particularly important given the risks to infiltration arising from the 1 metre proximity of the water infiltration tanks to the highest ground water level recorded.	See response to I.D4.
The Harpenden Society [REP6-130]		
13	Clause 8(4)(b)	This comment is repetition of a point raised by Mr Karl Wingfield, Transport Committee Member for the Harpenden Society, at Open Floor Hearing 3 on Monday 27 November.

I.D	Deadline 6 submission (Verbatim)	Luton Rising's Response
	We are concerned that LR do not have sufficient experience to appoint a new airport operator and can appoint itself as the airport operator (as contemplated in the Funding Statement). This could have a catastrophic effect on aviation safety and security	The Applicant provided a full response to this issue in the **Applicant's Post Hearing submission – Open Floor Hearing 3 [REP6-069]** submitted at Deadline 6. No additional response from the Applicant is required.
National Highways (Summary of Representations made at ISH10) [REP6-117]		
14	Schedules 1 and 2 – Authorised Development and requirements (excluding Part 3, Requirements 18 to 25) Schedule 1 – The current scheme of works does not include works to provide the gantries/wayfinding measures and maintenance bay as required by National Highways standards. In the absence of these works being included in the DCO, a Grampian requirement will be necessary in Schedule 2 providing for their delivery as part of Phase 1 of the works (currently undefined in the DCO with no requirement to provide a phasing plan/strategy).	The Deadline 7 version of the Draft DCO has been amended as requested by National Highways to expressly reference these works in Work 6e(n) of Schedule 1. The Applicant observes, additionally, that paragraphs (a), (i), (m) and (n) of the ancillary works, which are authorised to be delivered in connection with the numbered works, already contained the requisite powers. The Applicant further notes that the protective provisions for the benefit of National Highways at Part 5 of Schedule 8 to the Draft DCO submitted at Deadline 7 already afford National Highways prior approval to the detailed design of "specified works", which means "*any work, including highway works and signalisation, authorised by this Order including any maintenance of that work, as is on, in, under or over the strategic road network for which National Highways is the highway authority*"(see paragraph 39). "Detailed design" encompasses gantries/wayfinding measures and maintenance bays (see paragraph 37(2)). Accordingly, there is no need or justification for a Grampian condition providing for the delivery of these matters.
15	Schedule 2 – There is currently no requirement to provide a phasing plan/strategy that is consistent with the transport assessment and as such there is no clarity on which items of Schedule 1 will be brought forward in accordance with those particular phases. In the absence of a defined phasing strategy, it becomes very difficult to tie mitigation to particular milestones of the development. For a development of this scale and complexity to have no requirement for a phasing strategy is very unusual.	The Transport Related Impacts Monitoring and Mitigation Approach (TRIMMA) will ensure that the mitigation in Schedule 1 of the DCO is brought forward at an appropriate time in accordance with locationally-specific thresholds to be agreed in each case with the relevant highway authority. The revised **Outline TRIMMA [TR020001/APP/8.97]** submitted at Deadline 7 provides further clarity on this process.
16	Schedule 2 – The requirement to provide a TRIMMA "substantially in accordance with" the outline TRIMMA is not agreed. This wording only works where the control document is sufficiently advanced such that the changes to the final document are insubstantial. National Highways have been making representations since the start of the Examination that the outline TRIMMA is not sufficiently detailed – for example, there are no thresholds in the outline TRIMMA identifying when mitigation is to come forward. In such circumstances, it is inappropriate to use the device "in substantial accordance with" as this does not put National Highways in a position where it can predict when mitigation is likely to be delivered. For road safety purposes, National Highways cannot be left in the dark on this. As a consequence, the changes described below and the inclusion of new Grampian requirements is necessitated.	The revised Outline TRIMMA **[TR020001/APP/8.97]** issued at Deadline 7 provides further clarity and detail. The approach taken by the TRIMMA will be to agree locationally-specific thresholds with the relevant highway authority in respect of each Schedule 1 work, rather than to include thresholds at this stage.
17	Schedule 2 – Grampian requirements are necessary to tie works to the M1 Junction 10, the southbound and the northbound on slips to phases 1, 2a and 2b of the authorised development respectively. The only way to obviate the need for this is to link the respective works in Work No 6e	The Applicant does not accept the need for a Grampian requirement as suggested by National Highways. Schedule 1 of the DCO includes mitigation that is shown to mitigate the highways impacts of the Proposed Development and the TRIMMA process will ensure that this mitigation is delivered at the appropriate time. Any remaining issues at Junction 10 of the M1 are because of background traffic growth and are not for the Applicant to mitigate.

I.D	Deadline 6 submission (Verbatim)	Luton Rising's Response
	(n), (o) and (p) to a phasing strategy secured in the DCO or thresholds supported by sufficient opening year and design year modelling so that they can be specified now. Otherwise, there is no means by which further airport development can be restricted until the agreed mitigation works to the strategic road network are delivered.	
National Highways (Summary of Representations made at CAH2) [REP6-114]		
18	Section 127 and 138 of the PA2008 and Schedule 8 of the draft DCO – Protective Provisions The protective provisions for the benefit of National Highways included in Schedule 8 of the Development Consent Order submitted at Deadline 4 are not agreed. National Highways will be providing an updated draft to the Applicant for inclusion in the Development Consent Order issued at Deadline 6. Subject to agreement of the protective provisions for inclusion in Schedule 8 and an agreed position over certainty and security of the provision of mitigation works in respect of M1 J10, National Highways will withdraw its objection.	The Applicant has considered National Highways proposed draft Protective Provisions and is in discussions with National Highways on agreeing a final version of these. The Applicant expects to provide a further update at Deadline 8.
National Highways (draft DCO marked up with National Highways' proposed wording) [REP6-113]		
19		

Ref.	DCO Reference	Change made by NH
1	Part 1 (2) – Interpretation	Added definition of National Highways
2	Article 8 - Consent to transfer benefit of the Order	Additional paragraph (5) – "Notwithstanding the effect of paragraph (4) National Highways may assume the benefit of the order in relation to carrying out any works on a highway for which it is the highway authority."
3	Article 9 – Application of the 1991 Act	Paragraph 5 referencing (e.g. (m), (n), (o)) has been changed to (a) (b) (c)
4	Article 44 (1) – Interaction with LLAOL Planning Permission	"The undertaker may not, in accordance with this Order, operate the airport above the ~~passenger cap~~ commercial passenger throughput permitted by the LLAOL planning permission until notice under this article has been served on Luton Borough Council by the undertaker"
5	Schedule 1 – Authorised Development, Works 6E (n)	"M1 J10, including widening to the northbound off-slip to provide a third lane on the approach to the roundabout, provision of gantries, provision of maintenance bay, widening to the western circulatory carriageway to provide four circulating lanes and amendments to the exit from the roundabout onto the A1081, to allow three diverging lanes from the roundabout;"

Ref.	Applicant's Response
1	The definition of National Highways has been added to Article 2 of the Draft DCO submitted at Deadline 7.
2	The Applicant disagrees with this provision. National Highways should not automatically have the benefit of the Order, absent a transfer of powers conferred by the Applicant.
3	This is because paragraph (5) appears on a new page. This is considered to be correct drafting protocol.
4	"Passenger cap" is considered to be clearer drafting and is agreed with the current operator.
5	This amendment is accepted and has been included in Schedule 1 of the Draft DCO submitted at Deadline 7.
6	"mppa" is not a term used in the Applicant's version of the Draft DCO. The Applicant does not accept the need for any Grampian condition proposed by National Highways. See further the **Applicant's Response to Deadline 6 Submissions**, Appendix B, at item 5 of Table 1.3 **[TR020001/APP/8.163]**.
7	Paragraph (1) of Schedule 2 already incorporates "phasing" into the definition of "part".
8	The Applicant has made substantial amendments to paragraph 5 of Schedule 2 during the course of the examination, including to address phasing matters and ensure sufficient information about phasing is built into the Requirements discharging process. The Applicant notes that the host local authorities have welcomed and supported these changes. In the Deadline 7 version of the Draft DCO, the Applicant has added a new obligation at paragraph 5(7) of Schedule 2 to produce a rolling five-year programme of expected works.

I.D	Deadline 6 submission (Verbatim)	Luton Rising's Response

Deadline 6 submission (Verbatim)

6	Schedule 2, (Requirement) Definitions	Insertion of the definition of 'mppa'
7	Schedule 2, (Requirement) Definitions	Insertion of definition of each phase
8	Schedule 2, Part 2, paragraph 5 (Detailed design, phasing and implementation)	NH has inserted a requirement on the undertaker to submit to, and receive approval from, the relevant planning authority a construction phasing scheme for each phase of the authorised development before commencement of any part of the authorised development. A discharging of requirements mechanism for the construction phasing scheme has also been included.
9	Schedule 2, Part 3, paragraph 17 (Interpretation)	Definition of ESG inserted
10	Schedule 2, Part 3, paragraph 19, sub-paragraph 2 (Environmental Scrutiny Group)	NH have included 'National Highways" within subparagraph (2) meaning NH will be invited to the ESG meeting.
11	Schedule 2, Part 3, paragraph 19, sub-paragraph 4 (Environmental Scrutiny Group)	"The ESG must operate, meet and make decisions in accordance with its terms of reference unless otherwise agreed by the ESG and the undertaker, in accordance with the process set out in its terms of reference save that for matters of surface access relevant to the strategic road network any decision made by the ESG must have the written approval of National Highways"
12	Schedule 2, Part 3, paragraph 22, Sub-paragraph (8) (Exceedance of a Level 2 Threshold)	"Where the ESG has failed to make a decision under sub-paragraph (5)(b) within the time period specified in that sub-paragraph, it is deemed to have ~~approved~~ refused the Level 2 Plan."
13	Schedule 2, Part 3, paragraph 23, Sub-paragraphs (8) and (13) (Exceedance of a Limit)	"Where the ESG has failed to make a decision under sub-paragraph (5)(b) within the time period specified in that sub-paragraph, it is deemed to have ~~approved~~ refused the Mitigation Plan."
14	Schedule 2, Part 3, paragraph 24, Sub-paragraphs (6) (Review of implementation of this Part)	"Where the ESG has failed to make a decision under sub-paragraph (4) within the time period specified, it is deemed to have ~~approved~~ refused the application. "

Luton Rising's Response

	Discrete phases are not defined in the Applicant's version of the Draft DCO. The Applicant has been clear throughout the examination process that it requires flexibility to deliver growth in incremental phases which may differ from the assessment phases (Phases 1, 2A and 2B), for valid commercial reasons which need will respond to the rate of passenger growth. This is a key matter for the Applicant. Noting the above, the Applicant considers phasing is already adequately addressed in the draft DCO and does not agree with National Highways' proposed amendments to paragraph 5 of Schedule 2, which are unnecessarily restrictive. The Applicant notes that, in relation to its particular interests, National Highways benefits from substantial additional protections via the protective provisions at Part 5 of Schedule 8, and via the TRIMMA process secured by paragraph 29 of Schedule 2.
9-14	The Applicant has responded to National Highways' comments in respect of the Green Controlled Growth regime in the Applicant's Response to Deadline 6 Submissions, Appendix B **[TR020001/APP/8.163]**. The Applicant's position as a result of this is that none of the amendments in 9-15 are necessary or appropriate.
15	The Applicant does not accept this amendment to Requirement 29 (offsite highway works). The development is not, and should not, be tied to delivery in discrete or pre-defined phases. The TRIMMA process secures that highway mitigation will come forward at the point in time they are required to mitigate the effects of the project, without the need for this to be linked to any pre-defined phase, which would have a disproportionate impact on the flexibility the Applicant requires to deliver growth in line with demand.
16	The proposed drafting is under review and the Applicant anticipates provided a further update at Deadline 8. The Applicant would note that National Highways already has an approval rights for works to M1 junction 10 under the protective provisions at Part 5 of Schedule 8.
17-19	The Applicant does not accept the need for any Grampian condition proposed by National Highways. See further the **Applicant's Response to Deadline 6 Submissions**, Appendix B, at item 5 of Table 1.3 **[TR020001/APP/8.163]**.
20-31	The Applicant has considered National Highways proposed draft Protective Provisions and is in discussions with National Highways on agreeing a final version of these. The Applicant expects to provide a further update at Deadline 8.

I.D	Deadline 6 submission (Verbatim)			Luton Rising's Response
	15	Schedule 2, Part 4, paragraph 29 (Offsite highways works)	New sub-paragraph (3): "(3) Without prejudice to the generality of paragraph (2) of this requirement, the approach submitted must specify: (a) The phase of the development to which any mitigation or monitoring to which it refers will apply; and (b) The thresholds that apply to the provision of mitigation for each phase."	
	16	Schedule 2, Part 4, paragraph 29 (Offsite highways works) amended subparagraph (3)	"(4) From the date notice is served in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order the undertaker must carry out monitoring in accordance with the approach approved under sub-paragraph (1) and where this monitoring identifies that mitigation is required in accordance with the approach, the undertaker must submit a mitigation scheme to the relevant planning authority for approval in writing, following consultation with the relevant highway authority and, in respect of National Highways accompanied by written approval of the mitigation scheme, on matters related to its function."	
	17	Schedule 2, Part 4, new paragraph 34 (M10 Junction 10 Phase 1)	"No part of phase 1 may commence until a scheme providing for motorway signage and a maintenance bay necessitated by the proposed development for the M1 Junction 10 has been submitted to and approved in writing by the relevant planning authority in consultation with the relevant highway authority; (2) The authorised development must be constructed in accordance with the signage and maintenance bay scheme approved under sub-paragraph (1); (3) The authorised development must not be operated unless and until the works provided for in the signage and maintenance bay scheme approved under sub-paragraph (1) have been commissioned and completed; (4) This requirement may be enforced by National Highways as if it was a relevant planning authority. (5) No part of phase 1 may commence until a scheme for reporting the throughput of the airport in order to demonstrate the number of passengers travelling through it has been agreed with National Highways." National Highways have commented this requirement is needed if the amendments to schedule 1 works 6e are not agreed.	

I.D	Deadline 6 submission (Verbatim)			Luton Rising's Response
	18	Schedule 2, Part 4, new paragraph 35 (M10 Junction 10 Phase 2a)	"(1) No part of phase 2a may commence until a scheme of works is approved by the relevant highway authority for the M1 Junction 10 southbound merge including changing the merge layout type from 'Layout B – parallel merge' to a higher capacity 'Layout C -ghost island merge'. (2) The throughput of the airport must not exceed 21.5 million passengers per annum until the works identified in the scheme approved under sub-paragraph (1) have been commissioned and completed; (3) The mitigation works to the southbound merge must be constructed in accordance with the scheme of works approved under sub-paragraph (1); (4) This requirement may be enforced by National Highways as if it was a relevant planning Authority"	
	19	Schedule 2, Part 4, new paragraph 36 (M10 Junction 10 Phase 2b)	".(1) No part of Work No. 6e may commence until a scheme of works is approved by the relevant highway authority for the M1 Junction 10 northbound diverge including changing the diverge layout type from 'Layout B option 2 – Two-lane auxiliary diverge' to a higher capacity 'Layout D option 1 – ghost island lane drop'. (2) The authorised development must not exceed 27 million passengers per annum until the scheme of works approved under sub-paragraph (1) have been commissioned and completed; (3) The mitigation works to the north-facing slip roads must be constructed in accordance with the scheme of works approved under sub-paragraph (1); (4) This requirement may be enforced by National Highways as if it was a relevant planning authority."	
	20	Schedule 8, Part 5, paragraph 37 (Interpretation)	"specified works" means so much of any work, including highway works and signalisation, authorised by this Order including any maintenance of that work, as is on, in, under or over the strategic road network for which National Highways is the highway authority or which affects the strategic road network or the level or traffic on the strategic road network in any way	

I.D	Deadline 6 submission (Verbatim)			Luton Rising's Response
	21	Schedule 8, Part 5, new paragraph 39 (General)	'Requirements 34-36 of Schedule 2 of this Order shall be enforceable by National Highways'	
	22	Schedule 8, Part 5, amended paragraph 39 (1) (c) (iv) (Prior approvals and security)	"40…a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker, information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding;"	
	23	Schedule 8, Part 4, new paragraph 39 (1) (e) (Prior approvals and security)	'40 - stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(iv) above;'	
	24	Schedule 8, Part 4, amended paragraph 39 (1) (i) (Prior approvals and security)	"40 - agreed in writing by National Highways; (i) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant;"	
	25	Schedule 8, Part 4, amended paragraph 39 (2) (Prior approvals and security)	NH have included additional powers included as part of the list that the Applicant cannot exercise over the SRN without NH consent: article 16 (traffic regulation); article 19 (discharge of water); article 20 (protective works to buildings);	
	26	Schedule 8, Part 4, paragraph 40 new sub paragraph 12 (Construction of Specified Works)	"41…(12)Where in the opinion of National Highways the operation of the airport following construction of any specified work is leading to or may lead to an increase in traffic on the strategic road network beyond tolerable limits, National Highways may serve on the undertaker written notice to cease the operation of all or any part of such specified works until either the national highways mitigation works have been completed or capacity on the strategic road network is otherwise increased."	

I.D	Deadline 6 submission (Verbatim)			Luton Rising's Response
	27	Schedule 8, Part 4, paragraph 40 new sub paragraph 13 (Construction of Specified Works)	"41…(13)In the event of a notice being served pursuant to paragraph 12, the undertaker will suspend the operation of all specified works stated in the notice until either the national highways mitigation works have been completed or National Highways serves written notice on the undertaker confirming that capacity on the strategic road network has increased."	
	28	Schedule 8, Part 4, paragraph 41 amended (Payments)	"42…(e) all reasonable legal, technical and administrative costs and disbursements incurred by National Highways in connection the Order and with sub-paragraphs (a)-(c); and"	
	29	Schedule 8, Part 4, paragraph 42 amended sub paragraph 1 (Provisional Certificate)	"43…Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the specified works, National Highways will carry out a site inspection to satisfy itself that the strategic road network is, in its ~~reasonable~~ opinion, safe for traffic and the undertaker must comply with any requirements of National Highways prior to reopening the strategic road network."	
	30	Schedule 8, Part 4, paragraph 43 amended sub paragraph 4(e) (Provisional Certificate)	"44…the specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to sub-paragraph (3)(b) have been completed to the ~~reasonable~~ satisfaction of National Highways;"	
	31	Schedule 8, Part 4, paragraph 47 amended sub paragraph 4(a) (Final Certificate)	"48…any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph 11(2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the ~~reasonable~~ satisfaction of National Highways;"	
Buckinghamshire Council (Post-Hearing Submissions Including Written Submissions of Oral Cases) [REP6-087]				
20	In BC's view the consultation process in relation to Level 2 Plans and Mitigation Plans under Requirements 22 and 23 needs to be clarified. Whilst there is reference to "consultation period", there is no express obligation to consult. Such an express obligation should be included and it should make clear when the consultation should take place and with whom.			The Draft DCO has been updated for Deadline 7 to address the points raised by Buckinghamshire Council. In particular, Requirement 22(1) now contains an express obligation to consult the ESG on a draft Level 2 Plan no later than 21 days starting from the date the Monitoring Report was submitted to the ESG, unless another time period is agreed. Requirement 23 has been amended similarly but in relation to a draft Mitigation Plan.
21	In relation to the discharge of requirement process under Requirement 35 to the draft DCO, BC suggests that a minimum consultation period, be it 21 or even 14 days, is specified within the 8-week specified period for determining the application to discharge. This would ensure that			The Applicant considers that the power of the discharging authority to consult should remain discretionary and a specific consultation period is therefore not considered appropriate. However, the Applicant has amended Requirement 36 to include a period of five or ten business days (depending on the length of the specified period) for the discretionary consultee to notify the discharging authority of whether it

I.D	Deadline 6 submission (Verbatim)	Luton Rising's Response
	consultees have sufficient time to consider any application and are not consulted too late in the day.	requires any further information. The Applicant considers that this amounts to an appropriate amount of consultation time for discretionary consultees.
Buckinghamshire Council (Comments on Deadline 5 submissions) [REP6-086]		
22	Notwithstanding the above the Council maintains its position that the Applicant should seek to update requirement 36 to take account of the inclusion of discretionary consultees in the discharge of requirement process. In its current format paragraph 36 does not provide any direction to, or timeline for, the discharging authority with regard to consulting a discretionary consultee.	The Applicant directs the Council to its response at I.D21 above.
23	Additionally, the Council maintains its position that requirements 35 and 36 fail to establish a minimum consultation period that is to be undertaken within the specified period for the discharge of DCO requirements, be that with stated or discretionary consultees. In view of the above it is suggested that paragraph 35 of the dDCO be amended to include text akin to the following: *2.3.4. Where, by or under this paragraph or paragraph 36, the discharging authority are required or choose to consult any person or body ("consultee") before granting approval—* *2.3.5. (a) they must, unless the undertaker has undertaken pre-application consultation for the application under paragraph (1), give notice of the application to the consultee; and* *2.3.6. (b) where pre-application consultation has not been undertaken, they must not determine the application until at least 21 days after the date on which notice is given under sub-paragraph (a).*	The Applicant directs the Council to its response at I.D21 above.
Central Bedfordshire Council, Dacorum Borough Council, Hertfordshire County Council, Luton Borough Council, North Hertfordshire Council [REP6-095]		
24	The one exception where the Host Authorities do not support the submissions of the Environment Agency relates to the amendment proposed to paragraph 35(1)(a) of Schedule 2 to the draft DCO in relation to the "discretionary consultation" provisions. The Environment Agency proposes that the "may" ought to be replaced with a "must" rendering what was a discretion to consult into mandatory consultation. The Host Authorities remain of the view that the discharging authority is best placed to determine whether or not it is appropriate in the circumstances to consult. Making the consultation mandatory would only impose further burdens on the discharging authority and exacerbate concerns previously raised in relation to the shortness of time afforded to determine such applications before the "deemed consent" provisions kick in. However, if there are specific requirements relating to the functions of the Environment Agency in relation to which the Environment Agency considers it ought to be named as a mandatory	The Applicant agrees with the Host Authorities that the power of consultation in paragraph 35 should remain discretionary and has made a minor amendment to 35(1)(a) (deletion of "necessary") to bring further clarity in that respect.

I.D	Deadline 6 submission (Verbatim)	Luton Rising's Response
	consultee, in relation to which it is not currently named, the Host Authorities would support their inclusion.	
25	Part 6 – Provisions for the protection of highway authorities the following provisions were identified as "missing" from the LHA PPs when compared with what would normally be secured, were the Applicant proceeding under the TCPA 1990, under a Highways Act 1980 agreement: • Submission of road safety audits; • Submission of detailed design for approval of the LHA; • Provisions dealing with liabilities, e.g. indemnity, LHA reasonable costs, bond/guarantee; • Provisions dealing with booking road space; • Appropriate controls around the issue of certificates and for the works to be maintained by the undertaker during a maintenance period; and • Commuted sum for the future maintenance of the highway works.	Paragraph 56 of Schedule 8 of the Draft DCO requires the Applicant to provide copies of the reports of road safety audits to the relevant highway authority. Paragraph 55 of Schedule 8 of the Draft DCO requires the Applicant to submit detailed information relating to the relevant works for the local highway authority to comment and provide representations on. Paragraphs 59 and 60 provide appropriate controls around the provision of certificates and works to be maintained during a maintenance period, respectively. In respect of all provisions identified by Central Bedfordshire Borough Council (CBC), Dacorum Borough Council (DBC), Hertfordshire County Council (HCC), Luton Borough Council (LBC) and North Hertfordshire Council (NHDC), the Applicant's approach is precedented, reasonable and proportionate having regard to all other provisions in the Draft DCO.
26	Submission of road safety audits – while the draft protective provisions do make provision for road safety audits they do not do so in a way that accords with the authorities' road safety audit procedures or the nationally recognised guidance. For example, there is no mention of Stage 1/2 or Stage 2 road safety audits. Paragraph 56(3) in Part 6 of Schedule 8 to the draft DCO leaves the question of identifying the recommendations of the stage 3 and stage 4 safety audit to take forward to "the undertaker (acting reasonably)". A similar issue is found in paragraph 59(2)(a). This departs from the established approvals and exceptions procedure in GG19 under which the local highway authority would normally review and approve the Safety Audit Brief and the CVs of the team carrying out the audit. Under the normal procedures there is a process where the designer would respond to the road safety audit and it would be for the local highway authority to agree to any exceptions or non-compliances with the Road Safety Audit's recommendation. Ultimately, as the highway authority with expertise in this field and also being required to be responsible for such works, this determination ought to be made by the highway authority and not the undertaker, and road safety audits ought to be conducted in full compliance with the procedures established in GG19, with any exceptions approved by the local highway authority	The Applicant has been liaising with National Highways on the RSA1 and all technical matters are now considered to be agreed. The document is subject to finalisation by the Applicant and National Highways and the Applicant expects to issue it for Deadline 8.
27	Submission of detailed design for approval of the LHA – paragraph 55 makes provision for the submission of detailed design information to the local highway authority. However, the local highway authority is given no approval role. Instead the highway authority is given 14 days to make representations in relation to which the undertaker is only obliged to have "reasonable regard" to those representations. The time period of	The Applicant's approach is precedented and proportionate having regard to the provisions in Article 12 and Requirement 5 of the Draft DCO which require works to be carried out to the reasonable satisfaction of the relevant highway authority, and for the approval of detailed design by the relevant planning authority, respectively.

I.D	Deadline 6 submission (Verbatim)	Luton Rising's Response
	14 days is too short, and if a time period is required to be specified it ought to be no less than 30 days. The undertaker is proposing to carry out changes to the roads in relation to which the local highway authorities are responsible and would become liable to maintain under article 12 of the Order. The Applicant is not National Highways and does not possess the expertise in highway design that would make a provision such as this potentially acceptable. The highway authority must be in a position to refuse to accept a design that it considers to be unsuitable. The Host Authorities recognise that the Applicant may point to the design approval of the relevant planning authority under requirement 5 but as Mr Owen noted in the Hearing, it is clear that these two measures serve different functions. This is apparent on their own terms, contrast, for example, the "detailed information" listed in the definition of that term in paragraph 54 of the local highway authority protective provisions with the matters referred to in requirement 5. It is of paramount importance to public safety that the local highway authorities be afforded the capacity to approve the detailed technical information in relation to public highways.	
	Provisions dealing with liabilities, e.g. indemnity, LHA reasonable costs, bond/guarantee – the local highway authority is funded by the taxpayers of its area. They should not be exposed to additional liabilities as a result of the Applicant's proposals. The protective provisions ought to make provision for the local highway authorities' reasonable costs in administering the procedures they prescribe, protect the relevant highway authority through a suitably worded indemnity and make provision for it to step in and remedy (with the protection of a bond or guarantee secured prior to the start of works) where works are not carried out correctly or are abandoned. These provisions are accepted as standard as part of all highway works carried out by developers on the local highway authorities' roads under Highways Act 1980 agreements.	The Applicant's approach is precedented and proportionate. The covenant strength of the Applicant is stronger than that of a typical developer party to a section 278 agreement, and requirements under the Draft DCO are binding, requiring works to be carried out to the reasonable satisfaction of the local highway authority. Requirement 29 of the Draft DCO and the TRIMMA will ensure that mitigation is delivered when relevant, hence there is no material risk of works being inadequate or abandoned. However, the Applicant will further review its position in relation to liabilities and will provide a further response for Deadline 8.
28	Provisions dealing with booking road space – the protective provisions make no mention of the requirement to book road space. This is important as it allows the local highway authority to co-ordinate when road and street works are taking place, to minimise disruption to road users.	The Applicant's approach is precedented and proportionate, and Articles 9-11 of the Draft DCO are appropriate in regulating the carrying out of street works.
29	Appropriate controls around the issue of certificates and for the works to be maintained by the undertaker during a maintenance period - typically the first certificate (termed the "provisional certificate" in the draft protective provisions) is issued by the local highway authority following an inspection and the final certificate is issued by the local highway authority following a 12 month period where the works are maintained by the developer. While the proposed protective provisions contain elements of these procedures, they do not align with the standard terms of a Highways Act 1980 agreement and appear to conflict with article 12(1) which requires such works to be maintained by the local highway	The Applicant's approach is -precedented and proportionate having regard to the nature of the works proposed and the protections afforded by Article 12 of the Draft DCO. However, the Applicant will further consider its position in relation to the issuing of certificates and will provide a further response for Deadline 8.

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	authority "on completion". The protective provisions need to make clear that their terms prevail over article 12(1).	
30	Commuted sum for the future maintenance of the highway works – under article 12 the local highway authority will become liable to maintain the highways works. This will impose a financial burden on the local highway authority. This is usually addressed under a Highways Act 1980 agreement by way of the payment of a commuted sum, based on the estimated costs of the works, but the protective provisions are silent on this topic and the Applicant appears to expect the taxpayer to shoulder this burden	The Applicant will consider this issue and will provide an update for Deadline 8.
31	In addition to the matters set out above that were referred to in the hearing, the protective provisions do not contain any drafting dealing with the following which would normally be included in Highways Act 1980 agreements: o Requirements to comply with relevant design standards; o Requirements to comply with the Construction (Design and Management) Regulations 2015; and o Requirements to have in place appropriate insurance.	The Applicant's approach is precedented and proportionate having regard to the provisions in Article 12 and Requirement 5 of the Draft DCO which require works to be carried out to the reasonable satisfaction of the relevant highway authority, and for the approval of detailed design by the relevant planning authority, respectively. The Applicant's contractors would be required to comply with all relevant legal obligations. Given Requirement 29 of the Draft DCO secures offsite highway works, it is the Applicant's position that there is no material risk in relation to the concerns raised. However, the Applicant will further consider this issue and will provide a further response for Deadline 8.
32	Finally, it should be borne in mind that the highways works for which the Applicant seeks development consent are works required some considerable time in the future. There is no urgent or pressing need in the public interest to override the typical procedures and timescales that would apply to a developer wishing to carrying out works to the highway. While the Host Authorities will work with the Applicant to agree appropriate protective provisions, it should be noted that they could readily be replaced by a simple obligation on the undertaker not to carry out any of the works in a local highway, or works that would become a local highway, until the Applicant has entered into a Highways Act 1980 agreement with the relevant local highway authority for the relevant works. While the protective provisions do not preclude such agreements from being entered into and thereafter superseding the protective provisions, there is nothing to motivate the Applicant to agree to such terms when it could instead rely on the process set out in Part 6 of Schedule 8.	The Applicant's approach is precedented and proportionate, and provides an appropriate level of certainty at this stage. As noted, the protective provisions do not preclude the possibility of entering into a section 278 agreement in future.
33	Following a discussion on the effect of article 45(1) Robbie Owen for the Host Authorities noted that the drafting in article 45(1) is well precedented. Rather than addressing the concerns raised in respect of it being used to treat the replacement Wigmore Valley Park operational land subject to permitted development, he suggested this could alternatively be addressed by clearly "carving out" the replacement land from its scope.	In the Draft DCO submitted for Deadline 7, the Applicant has made amendments to Article 45 which clarify which part of the development consent granted by the Order is to be treated as specific planning permission for the purposes of section 264(3) of the 1990 Act, i.e. which land is to be treated as operational land.

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34	Robbie Owen for the joint Host Authorities submitted that they did not object to Article 45 in principle but wanted to make sure that there are no unintended consequences or gaps in enforcement. It is relatively novel drafting and it would be challenging to foresee precisely how it would work in practice. Jonathan Leary outlined that article 45(2)(c) said that if the LLAOL or GHP permission is inconsistent with "any power or right exercised under this Order or the authorised development then… any conditions on that planning permission that are inconsistent with this Order or the authorised development cease to have effect from the date the authorised development is begun." It was submitted that this is less of a concern as between the LLOAL permissions, as that is dealt with by article 44. In relation to GHP, this could render unenforceable any conditions that are inconsistent with the Order or the authorised development once any part of the authorised development is begun, whether or not the aspects of the authorised development or the Order giving rise to the inconsistency, have in fact begun. Jonathan Leary noted that there was no definition for "begin" in article 2(1) of the Order, so section 155 of the Planning Act 2008 would apply. This would mean development would begin on the date a "material operation" is carried out. Very minor works indeed, that do not present an inconsistency, could inadvertently render unenforceable conditions of the GHP planning permission. Robbie Owen outlined that it may be that these concerns could be addressed by way of introducing some procedural provisions requiring, for example, the undertaker to give notice to the relevant planning authority of any such inconsistencies and to confirm under which consent (i.e. the Order or the extant planning permissions) the relevant activities were being conducted under. This would ensure, that from an enforcement perspective, it remained clear which conditions apply to which activities.	The Applicant notes that the Host Authorities do not object to Article 45, and the Applicant welcomes this position. In response to the Host Authorities' comments, the version of the Draft DCO submitted at Deadline 7 contains amendments to Article 45 to confirm that it would only "bite" to the extent inconsistent development under the DCO had been carried out, or an inconsistent power or right had actively been exercised. This addresses the concern raised by the Host Authorities about the potential for Article 45 to take effect before any inconsistency arises, and so would avoid any unintended consequences. In relation to very minor works which did not give rise to an inconsistency, then by that definition they would not engage Article 45. The Applicant has also included, in revised Article 45(5), a notification mechanism along the lines proposed by the Host Authorities to ensure that the relevant planning authority has sufficient sight of Article 45 being engaged, and should it disagree with the existence of an inconsistency it could engage with the matter accordingly (e.g. via discussions with the undertaker, and ultimately enforcement action). Accordingly, there would be no "gap" in enforcement. Article 45 is not novel, and has clear precedent – see, for example: article 35 of Network Rail (Cambridge South Infrastructure Enhancements) Order 2022; article 3(3) of the Lake Lothing (Lowestoft) Third Crossing Order 2020; and article 6(4) of the Riverside Energy Park Order 2020. There are also a number of DCOs which contain provision which have materially the same effect as article 45(4) (e.g., Article 5(2) of The East Midlands Gateway Rail Freight Interchange and Highway Order 2016, article 44(3) of the West Midlands Rail Freight Interchange Order 2020 and article 6(2) of the Little Crow Solar Park Order 2022). The Applicant further notes that a similar provision is included in article 56 of the draft Lower Thames Crossing DCO, which has been subject to examination and was well received by the host local authorities for that project as a necessary and welcome provision (see, for instance, [page 25 of [REP5-107] and [page 33 (row 33) of [REP3-210] of the Lower Thames Crossing examination library). Finally, a similar provision is included in article 9 of the draft Gatwick Airport DCO. Whilst each of these precedents is drafted in a manner applicable to the specific scheme, the substantive effect of the provision in each case is the same. These precedents highlight the potential necessity for such a provision where a scheme engages overlapping permissions, and that (in terms of the made Orders) the Secretary of State has endorsed them as acceptable, and in accordance with section 120 of the Planning Act 2008 in the case of DCOs. The Applicant would highlight that none of the precedents referred to above include the notification provision now included at Article 45(5) of the Draft DCO, so the Applicant has gone further than precedent in this respect. See further the Applicant's justification for Article 45 in the **Applicant's Response to Written Questions on the Draft Development Consent Order [TR020001/APP/8.153]** – specifically the response to the Examining Authority's Second Written Questions DCO 2.1 and 2.2.
35	In their post-hearing submissions, LBC suggested that some of the planning conditions attached to the 19mppa planning permission (LBC ref: 21:00031/VARCON) had targets/requirements that could be higher than those associated with the DCO.	The Applicant has, where appropriate, carried over and secured relevant conditions through updates to Article 44 submitted alongside this submission at Deadline 7 (which ensures that planning permission development which is not completed or which relates to monitoring and management of that development) is secured. The Applicant refers to its commentary on this revised provision in **Explanatory Memorandum** submitted at Deadline 7 **[TR020001/APP/2.02]**. See also the response to ID47 below.

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		In addition, the Applicant has secured a raft of existing noise-related conditions under the terms of the air noise management plan (secured under Requirement 26 of Schedule 2 to the Draft DCO).
36	Requirement 5 (detailed design, phasing and implementation) Robbie Owen noted that the Host Authorities commented at Deadline 5 in [REP5-068], broadly welcoming the amendments to requirement 5. Nonetheless, there remains some queries. For example, it isn't clear practice how the reference to the "scheme layout plans" in paragraph (2)(b)(ii) is intended to work. Robbie Owen also commented that there is no link between the parts of the authorised development approved under this requirement, and the pre-commencement requirements that correspond to that approved detailed design. This approach is common in outline planning permissions. While a DCO is not an outline planning permission, it is clear that this draft Order does have many features in common with an outline planning permission.	With reference to the scheme layout plans referred to in paragraph (2)(b)(ii), the Applicant considers that it has responded to this point made by Luton Borough Council in its response to Deadline 5 submissions [**REP6-053].** The Applicant has given further consideration to the Host Authorities' comment on the link between the discharge of related Requirements. The Applicant considers that the approach that is has taken to drafting Schedule 2 is conventional and well-precedented, and does not consider that further drafting is required to address this comment because: • The Applicant has committed to a register of requirements (Requirement 37) which has been drafted in the format request by the Host Authorities to cover both live applications and approved applications / decisions – meaning information about Requirements will be readily accessible; and • Requirement 36 allows a discharging authority to request additional information in response to an application to discharge a Requirement – and so, if there was a need for clarity around the relationship between Requirements, this could validly form the basis of an information request to the undertaker, specific to the matter in question at the relevant time.
37	Robbie Owen noted that the requirement 5 was only as effective at driving 'good design' as the "design principles" [REP5-034]. The Design Principles document appeared to be focussed on securing, in the main, embedded mitigation relied upon in the assessment. While necessary, it did not contain much in the way of detail as to what the design vision is for the new buildings and structures. There was no indicative detail concerning matters such as a material palette, design codes for 'public realm' type environments and similar material that is commonly included in design principles documents. David Gurtler outlined Luton Borough Council's concerns that the Design Principles did not explain the design intent in relation to two key buildings that would be authorised by the DCO, namely the new terminal building and the hotel. These are key 'gateway' buildings and while the Applicant may not currently be in a position to set out in greater detail its design intent, appropriate mechanisms, such as public consultation and design review panels, would give greater confidence that the evolving designs coming forward for approval under this requirement would exhibit 'good design' that has been independently verified. The Host Authorities and the Applicant have arranged a meeting to discuss design review to be held on Tuesday 12 December.	In response to comments received from the ExA and the Host Authorities on design and the Design Principles document the Applicant has reviewed and updated the Design Principles document to reflect these issues. An updated **Design Principles** document has been submitted at Deadline 7 **[TR020001/APP/7.09].**
38	Use of 'substantially in accordance with' Robbie Owen noted that the Host Authorities had previously raised concerns with apparently inconsistent standards of compliance. The Applicant has since explained that "in accordance with" is used where	The Applicant notes and welcomes the Host Authorities' comment on this point.

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	compliance with a finalised document is required and "substantially in accordance with" is used where an outline document is to be developed into finalised document. Robbie Owen noted that there is a logic to the Applicant's approach with the two standards of compliance reflecting two distinct approaches to developing the details required to be approved under the relevant requirements	
39	Changes made in the Deadline 5 draft DCO Paragraph 17 (interpretation) The "consultation period" has been extended by the Applicant from 21 days to 28 days. Robbie Owen noted that the drafting in relation to the concept of "consultation" was not as clear as it could be. For example, none of the provisions in which the term "consultation period" appeared indicated the point at which "consultation" is to occur, nor who is to be consulted. The drafting only appeared in provisions that require the undertaker to have regard to comments received in the consultation period, but there did not appear to be, on the face of the Order, a positive obligation on the undertaker to consult in the first place. It may be set out in the various GCG documents, but it ought to be clear on the face of the Order, particularly where there are "deemed approval" provisions.	The Applicant directs the Host Authorities to its response at I.D20 above.
40	Paragraph 19 (Environmental Scrutiny Group) Robbie Owen noted that this provision has been amended to require the ESG to be established as soon as reasonably practicable following service of article 44 notice. There did not seem to be a good reason why the ESG could not be required to be established prior to service of article 44 notice, in a similar fashion to the amendments to the pre-operational requirements contained in Part 4 of Schedule 2 to the draft DCO.	The Applicant updated paragraph 19 of Schedule 19 to ensure that the ESG was established 'as soon as reasonably practicable'. The provision has a 'long-stop date' which ensures it must be established 56 days before its first meeting (i.e., the first time it would be required to fulfil some function under the DCO). It is therefore not considered necessary to make any further amendments. The Applicant would note that the establishment of the ESG is not within control of the Applicant as there are parts of the process that require involvement of the Secretary of State. Furthermore, the first meeting of the ESG would be after the submission of the first monitoring report therefore at least one calendar year after submission of the Article 44 notice. In those circumstances where it is guaranteed the ESG will be established when it is necessary to the operation of GCG, the Applicant does not consider it necessary to introduce an unnecessarily onerous and stringent timescales which may be breached through no fault of its own.
41	Removal of the 'transition period', deletion of paragraph 17(4) and amendments to paragraph 20 of Schedule 2 to the Draft DCO The Host Authorities welcome the removal of the so-called transition period comprised in the deletion of paragraph 17(4) of Schedule 2. However, for the reasons set out in more detail in the Host Authorities' ISH9 Post Hearing Note, the Host Authorities remain concerned that there will nonetheless still be a 'gap between the service of the article 44 notice and the establishment of the full GCG framework. This 'gap' arises in terms of the monitoring of air quality, greenhouse gas emissions and	As set out in the Applicant's response to Issue Specific Hearing 9 Action Point 7 **[REP6-067]**, there is no 'gap' in provision of monitoring and it is not considered that any changes to the Draft DCO are required.

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	surface access (see paragraph 20(1)(b) of Schedule 2) where monitoring is not required to start until 1 January in the calendar year following service of the article 44 notice. The Applicant is in control of when it chooses to trigger article 44 and so there is no reason in principle why monitoring could not start sooner so as to avoid this 'gap.'	
42	in relation to the Examining Authority's question DCO.1.19, which related to Requirement 40 and the mechanism whereby other authorities may request Luton Borough Council to consider taking enforcement action, that the Hertfordshire Authorities had previously queried (in paras 9.1.79 to 9.1.80 of the LIR [REP1A-003]) why this provision does not permit a request to be made to LBC to take enforcement action where there has been a failure to produce a Level 2 Plan or Mitigation Plan (only for a failure to implement such a plan). The Hertfordshire Authorities have not yet received a response from the Applicant on this issue.	For Deadline 7, the Applicant has made an amendment to Requirement 40 which addresses this point.
43	Host Authorities have raised concerns that there did not appear to be a remedy if the authorised development is persistently in breach of a Limit. The sanction is that it can grow no further, but this risks persistent unacceptable effects without any clear mechanism to take further remedial action	The Applicant considers that the GCG Framework provides a ground-breaking mechanism for any UK airport in ensuring that operations are maintained within defined limits. GCG operates through setting thresholds, which give early warning of potential exceedances of the Limits, as well as monitoring which ensures that potential exceedances are able to be pre-empted. It should be noted that even before a Limit is breached, there is a requirement to submit a Level 2 Plan where a Level 2 Threshold is exceeded. Such a plan is the subject of independent consideration and approval from the ESG, and increases in capacity are not permitted in the absence of such an approval. Those Limits and Thresholds are based on robust assessments taken from the Environmental Statement. Given this framework, it is considered that exceedances of a Limit are unlikely. Even where an exceedance does occur, the DCO is clear that the Mitigation Plan to be produced, and submitted, must remove the exceedance as soon as reasonably practicable (and a Mitigation Plan would also be subject to independent oversight and approval from the ESG). In the case of a persistent exceedance, the Applicant notes that the DCO requires consideration of local rules. In the Applicant's view, this is a robust and unparalleled level of control. The Applicant notes that the Host Authorities have not suggested or particularised "further remedial action", and the Applicant would query whether any further action would be consistent with the established processes under the Airports Slots Regulations. In the absence of a particularised suggestion, and given the strong controls in place, the Applicant requests that the ExA affords no weight to this comment from the Host Authorities.
44	The second area that the 'deemed consent' provisions apply is in Part 5 of Schedule 2 to the draft DCO which deals with the procedures applying to the determination of approvals required under the requirements in Schedule 2. Paragraph 34 defines the "specified period" as being 8 weeks and paragraph 35(3) confirms that if the discharging authority does not determine the application within 8 weeks "the discharging authority is taken to have granted all parts of the application (without any condition or qualification at the end of that period)." Paragraph 36, which deals with requests for further information, tells us in sub-paragraph (2) that the discharging authority has only 10 business days to determine	For Deadline 7, the Applicant has made amendments to the Draft DCO to address these points. In particular, paragraph 36(3)) now makes it clear that: • the discharging authority must issue the application to the consultee, whether that consultation is required or whether it is at the discretion of the discharging authority, within five business days of receipt of the application; • the discharging authority must allow the consultee the following amount of time to notify it of whether the consultee requires further information: ○ ten business days for detailed design approval of Works Nos. 3b(01), 3b(02), 3f and 4a; and

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	whether it requires further information. In relation to requirements where consultation with a consultee is expressly required, sub-paragraph (3) tells us that the consultee has only 5 days to review the information and ascertain whether or not further information is required. In either event subparagraph (4) tells us that no further information may be requested after this period of time and the discharging authority and any consultee is deemed to have all the information they need, whether or not that is in fact the case. In the context of a complex development such as that proposed by the Applicant and where there are overlapping EIA planning permissions (with the Green Horizons planning permission) and the distinct possibility of a large volume of requirements for which discharge is sought at the same time, with respect, these provisions impose wholly unrealistic obligations on the discharging authority and on the consultees. The Applicant is likely to say in response, that if there is insufficient time to determine an application, or if a requirement for further information is identified by the discharging authority or a consultee after the time for making such requests, then it would be open to the discharging authority to either seek the agreement of the Applicant to extend the "specified period" or to seek the voluntary agreement for the provision of such further information, and failing that agreement, refuse to grant consent. However, that is not an adequate response. In relation to both the consents required under the articles of the DCO and in relation to the discharge of requirements, Part 6 of Schedule 2 enables the undertaker to appeal to the Secretary of State. The circumstances in which an appeal may be made are set out in paragraph 38(1) and are very broad indeed. Importantly, paragraph 38(13) confirms that the 'appointed person' may give a direction as to costs. It is therefore no adequate answer to say that the discharging authority can just refuse an application; to do so would put it, and the taxpayer, at risk of costs. Similarly, it can readily be envisaged that a consultee identifies an important deficiency requiring further information after the short 5 working day deadline has expired. The discharging authority would be in a very weak position where it has refused an application because it in fact lacks the necessary information but it has been deemed, by virtue of paragraph 36(4), to possess that information. Typically, the justification for imposing short determination periods backed up by 'deemed consent' provisions in DCOs is to avoid the potential for delay to the implementation of urgently needed Nationally Significant Infrastructure Projects. However, in this instance, the Applicant's case is that it is seeking a framework within which its facility can grow over time. It does not have the same urgency as with many other NSIPs. With the grant of the 19 million passengers per annum planning consent it already has considerable 'headroom' to	○ five business days for any other application under Part 1, Part 2 or Part 4 of Schedule 2 of the draft DCO; • the discharging authority must then notify the undertaker of any such further information requested within the following time periods: ○ 20 business days of receipt of a request for further information in relation to the design approval of Works Nos. 3b(01), 3b(02), 3f and 4a; and ○ 15 business days of receipt of any other application under Part 1, Part 2 or Part 4 of Schedule 2 of the draft DCO.

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	expand. The inclusion of 'deemed consent' provisions, coupled with short determination and consultation periods, therefore risks important safeguards being removed and risks requests not being properly scrutinised by obtaining all of the information required or due to the shortness of time before hitting the 'deemed consent' deadline.	
45	Following discussion on the format of Schedule 9 which focussed on the importance of making this Schedule as "user-friendly" as possible, Robbie Owen asked the Applicant to consider adding a further column to that Schedule to set out the operative provision to which the relevant certified document related. Robbie Owen also suggested that the Schedule could be re-organised to group similar documents together, for example, listing the component parts of the Environmental Statement separately.	The Applicant directs the Examining Authority to its response to ISH10-AP18 in the document submitted at Deadline 7, **Applicant's Response at Deadline 7 to Hearing Action Points (OFH3, CAH2 + ISH7-10) [TR020001/APP/8.165].**
46	Currently CBC is discussing an appropriate mechanism with the Applicant to secure the following works, which all fall outside of the DCO limits and which are not considered to be covered by either current requirements or the OTRIMMA: • Junction improvement works at the Junction of Chaul End Road with Luton Road, Caddington; • Traffic Calming works in Caddington; • Junction improvement works at the junction of Luton Road with Newlands Road; • Measures to manage parking in Slip End; and • Traffic monitoring at the junction of the B653 with West Hyde Road and at the junction of the B4540 with Front Street, Slip End. In the event that no alternative and appropriate means of securing these works can be identified and agreed with the Applicant, then CBC will be seeking for these works to be referenced in and secured by the section 106 Agreement. Discussions with the Applicant will also need to take place about the Agreement making provision for payment by the Applicant of costs incurred by the Host Authorities during implementation of the DCO.	The Applicant is in discussion with CBC on a mechanism to address these concerns with the intention of agreeing this as soon as reasonably practicable.
Luton Borough Council (Comments on D5) [REP6-103]		
47	P19 Conditions Whilst the Applicant has indicated that eight of the conditions associated with the 19mppa planning permission are not considered to be relevant, at the ISH10 session, BDB Pitmans on behalf of the Applicant did acknowledge that an issue could arise if Phase 3 had not been completed by the time notice of intention to commence the DCO was	In the version of the Draft DCO submitted at Deadline 7, and in recognition of the matter discussed at ISH10, the Applicant has made substantial drafting amendments to Article 44(3)-(5) of the Draft DCO. This establishes transitional provisions for conditions of the existing airport planning permissions which require the delivery of built development which has not been completed at the point Article 44(1) notice has been served, or where those planning permissions create a specific monitoring or management scheme for that built development which should continue beyond the service of article 44(1) notice. See further commentary on this in the revised **Explanatory Memorandum** submitted at Deadline 7 **[TR020001/APP/2.02]**.

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	served on the Council. This would necessitate an article similar to that of Article 45 associated with the Green Horizons Park permission. There also needs to be in place provision for the protection of the mode share levels that might have been achieved under the updated Travel Plan required by condition 18 for 19mppa, and carbon reduction achieved in line with the Carbon Reduction Strategy secured under condition 19.	The Applicant does not agree that there needs to be a mechanism to preserve, from the 19 mppa permission, the Travel Plan mode share targets nor the carbon reduction targets. The DCO establishes new and ground-breaking limits under the GCG regime for surface access and carbon, which set legally binding limits (rather than targets) which are relevant to expansion to 32 mppa, are policy compliant, and include mechanisms to improve performance within the limits.