

**London Luton Airport Expansion Project**  
**TR020001**  
**Examining Authority's**  
**Consultation Draft Development Consent Order**  
**(DCO)**

**Schedule of Examining Authority's recommended amendments to the  
Applicant's draft DCO submitted at Deadline (D) 7 [REP7-003]**

The following table sets out the Examining Authority's (ExA) recommended amendments to the Applicant's draft Development Consent Order (DCO) that was submitted at Deadline (D) 7 [REP7-003].

Regardless of the ExA's recommendation to the Secretary of State a recommended DCO will need to accompany the recommendation report. As a result, the production of this document was done on a without prejudice basis and should not be taken as an indication of the ExA's final recommendation.

The purpose of this document is only to highlight potential changes to the draft DCO that have not already been submitted into the Examination or discussed at Issue Specific Hearings (ISH).

Recommended amendments are set out in the same order that they appear in the DCO as currently drafted. Column 2 of the table indicates the current drafting as suggested by the Applicant; column 3 provides either the ExA's preferred drafting with the recommended changes shown in bold or the proposed drafting where the ExA consider something needs to be inserted. An explanation for the change or insertion is provided in column 4.

Responses to this document are due at **Deadline 8, Tuesday 23 January 2024**.

Reference	Text as set out in the draft DCO	ExA's recommended amendment/ insertion	Reasons and notes
<b>INTRODUCTION</b>			
	[The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120 and 122 of the 2008 Act, makes the following Order --]	[The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120, <del>and</del> 122, <b>123 and 147</b> of the 2008 Act, makes the following Order --]	Section 123 deals with land to which authorisation of compulsory acquisition can relate. Section 147 deals with development of Green Belt land. The ExA considers these to be relevant in the determination of this Application.
<b>ARTICLES</b>			
2	“relevant highway authority” means, in any given provision of this Order, the highway authority for the highway to which the provision relates;	“relevant highway authority” means, in any given provision of this Order, the highway authority for the highway to which the provision relates, <b>including in relation to the strategic road network National Highways;</b>	To ensure that National Highways are consulted on matters that affect the strategic road network.
8	<b>Consent to transfer benefit of Order</b> (4)(j) in relation to a transfer or a grant of any works within a highway, a highway authority responsible for the highways within the Order land.	<b>Consent to transfer benefit of Order</b> (4)(j) in relation to a transfer or a grant of any works within a highway, a highway authority <b>(including National Highways)</b> responsible for the highways within the Order land.	The ExA considers that the additional text makes it clearer that highway authority includes National Highways.
11	<b>Power to alter layout, etc., of streets</b> (1)(a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; (b) alter the level or increase the width of such kerb, footpath, footway, cycle track or verge;	<b>Power to alter layout, etc., of streets</b> (1)(a) increase the width of the carriageway of the street by reducing the width of any <del>kerb</del> , footpath, footway, cycle track or verge within the street; (b) alter the level <b>of such kerb or alter the level and</b> increase the width of such <del>kerb</del> , footpath, footway, cycle track or verge;	The ExA notes the Applicant's response [REP3-073] to the previous request to delete this wording. The ExA is of the opinion that a kerb is a physical object of set dimensions and so cannot be changed in the same way that a width of a verge or footpath can be changed and therefore should be omitted from the list.

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14	<b>Permanent stopping up of public rights of way</b>	<b>Permanent <del>stopping up</del> closure of public rights of way</b>	The ExA notes the Applicant's response [REP3-073] to the previous request to amend this wording. However, whilst there is precedent for the use of the phrase 'stopping up' this is incorrect as the term is used in relation to mineral extraction and the correct term is closure.
21	<b>Authority to survey and investigate the land</b> (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.	<b>Authority to survey and investigate the land</b> (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless <b>at least no less than</b> 14 days' notice has been served on every owner and occupier of the land.	The ExA notes the Applicant's response [REP3-073] to the previous request to amend this wording. However, the ExA considers that 'no less than' is a more precise form of drafting and is also precedented in other Orders.
22	<b>Felling or lopping of trees and removal of hedgerows</b> 22.—(1) Subject to paragraph 9 of Schedule 2 to this Order, the undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub— (a) from obstructing or interfering with the construction, maintenance or operation of the	<b>Felling or lopping of trees and removal of hedgerows</b> 22.—(1) Subject to paragraphs <b>8 and</b> 9 of Schedule 2 to this Order, the undertaker may fell or lop any tree <del>or</del> , shrub <b>or hedgerow</b> within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree <del>or</del> , shrub <b>or hedgerow</b> — (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or (b) from constituting a danger to persons using the authorised development.	The ExA notes that a response to its suggested change to sub-paragraph (4) in the supplementary agenda to Issue Specific Hearing (ISH)1 [EV6-002] was not provided at Deadline (D) 4. The ExA has recommended consolidating sub-paragraph (4) into (1). The ExA welcomes the insertion of reference to paragraph 9 of Schedule 2 to this Order, but also considers that reference should be made to paragraph 8 given that this paragraph would secure the details of any landscaping scheme.  Sub-paragraphs (2) and (3) have been added noting that Work Nos. 6e(l), 6e(k) and 6e(m) are proposed within and

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	<p>authorised development or any apparatus used in connection with the authorised development; or</p> <p>(b) from constituting a danger to persons using the authorised development.</p> <p>(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.</p> <p>(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.</p> <p>(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.</p> <p>(5) In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997(a)</p>	<p><b>(2) The powers in sub-paragraph (1) may not be exercised in relation to any tree, shrub or hedgerow which is situated within a conservation area (designated under section 69 (designation of conservation areas) of the Planning (Listed Buildings and Conservation Areas) Act 1990), unless any tree, shrub or hedgerow has been identified in such a scheme submitted under paragraphs 8 and 9 of Schedule 2 to this Order along with written details of proposed works and the relevant planning authority has provided written approval of that scheme.</b></p> <p><b>(3) The powers in sub-paragraph (1) do not apply to any tree, shrub or hedgerow that is subject to a tree preservation order made under the provisions of the 1990 Act and the Town and Country Planning (Tree Preservation) (England) Regulations 2012, unless any tree, shrub or hedgerow has been identified in such a scheme submitted under paragraphs 8 and 9 of Schedule 2 to this Order along with written details of proposed works and the relevant planning authority has provided written approval of that scheme.</b></p> <p><b>(24) In carrying out any activity authorised by paragraphs (1), (2) and (3), the undertaker must do no unnecessary damage to any tree, <del>or</del> shrub or hedgerow and must pay</b></p>	<p>adjoining both the Hitchin Conservation Area and Hitchin Hill Conservation Area as well as the comments from the Hertfordshire Host Authorities at D7 [REP7-087] advising of the presence of tree preservation orders. The option to include trees, shrubs or hedgerows within the schemes required under paragraphs 8 and 9 of Schedule 2 to this Order, would allow the Applicant the flexibility to seek approval of any works required as part of these details and the relevant planning authority to consider the suitability of any proposed works.</p>

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	and includes important hedgerows.	<p>compensation to any person for any loss or damage arising from such activity.</p> <p><del>(35)</del> Any dispute as to a person's entitlement to compensation under paragraph <del>(24)</del>, or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.</p> <p><del>(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.</del></p> <p><del>(56)</del> In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997<del>(a)</del> and includes important hedgerows.</p>	
35 (1)	<p><b>Special category land</b></p> <p>(1) On the exercise by the undertaker of the Order rights, the special category land is not to vest in the undertaker (or any specified person), and the undertaker may not acquire any rights over the special category land, until the replacement land has been acquired in the undertaker's name or is otherwise in the name of persons who owned the special category land on the date those powers are exercised and the relevant planning authority has certified that a scheme for the</p>	<p><b>Special category land</b></p> <p>(1) On the exercise by the undertaker of the Order rights, the special category land is not to vest in the undertaker (or any specified person), and the undertaker may not acquire any rights over the special category land, until the replacement land has been acquired in the undertaker's name or is otherwise in the name of persons who owned the special category land on the date those powers are exercised and the relevant planning authority has certified that a scheme for the provision of replacement land including a timetable for the implementation of the scheme has been received from the undertaker.</p> <p><b>The timetable must include a clear statement of when the replacement land</b></p>	<p>The ExA and a number of Interest Parties have raised concerns regarding when the replacement land would be not only provided but when that land would be no less advantageous to the public than Wigmore Valley Park which it would replace. The ExA consider that the additional wording would provide a clear timeframe for when this would be achieved.</p>

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	provision of replacement land including a timetable for the implementation of the scheme has been received from the undertaker.	<b>will have been laid out to the extent that it is no less advantageous to the public.</b>	
35(3)	The undertaker must implement the scheme certified by the relevant planning authority under paragraph (1) and on the date on which the replacement land is laid out and provided in accordance with that scheme, the replacement land is to vest in the persons in whom the special category land was vested on the date of the exercise of the Order powers (if the replacement land is not already owned by those persons) and is to be subject to the same rights, trusts and incidents as attached to the special category land.	The undertaker must implement the scheme certified by the relevant planning authority under paragraph (1) and on the date on which the replacement land is laid out <b>to the extent that it is no less advantageous to the public</b> and provided in accordance with that scheme, the replacement land is to vest in the persons in whom the special category land was vested on the date of the exercise of the Order powers (if the replacement land is not already owned by those persons) and is to be subject to the same rights, trusts and incidents as attached to the special category land.	The ExA consider that the additional wording is necessary to ensure that the replacement land is no less advantageous to the public than Wigmore Valley Park which it would replace.
45 (1)	<b>Application of the 1990 Act</b> (1) Development consent granted by this Order— (a) which applies to land forming part of the airport; or (b) which authorises works to apparatus of statutory undertakers on, under or over	<b>Application of the 1990 Act</b> <del>(1)</del> Development consent granted by this Order— (a) which applies to land forming part of the airport; or (b) which authorises works to apparatus of statutory undertakers on, under or over land, is to be treated as specific planning	The ExA has examined the need for this article and its drafting in some detail [PD-007, Annex F], [EV6-001], [PD-010], [EV17-001], [EV17-007] and [PD-015]. The ExA also notes the explanation provided in the Explanatory Memorandum [REP7-005] for why it has been included and the further response provided by the

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	<p>land, is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act provided development which comprises the airport or apparatus belonging to a statutory undertaker is authorised under this Order and has been carried out on the land in question.</p> <p>(2) To the extent that the LLAOL planning permission or the Green Horizons Park permission or compliance with any conditions or either of those permissions is inconsistent with authorised development which is carried out under this Order, or any power or right exercised under this Order, then from the point at which that inconsistency arises—</p> <p>(a) that inconsistency is to be disregarded for the purposes of establishing whether any</p>	<p>permission for the purposes of section 264(3) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act provided development which comprises the airport or apparatus belonging to a statutory undertaker is authorised under this Order and has been carried out on the land in question.</p> <p><b>(2) To the extent that the LLAOL planning permission or the Green Horizons Park permission or compliance with any conditions or either of those permissions is inconsistent with authorised development which is carried out under this Order, or any power or right exercised under this Order, then from the point at which that inconsistency arises—</b></p> <p><b>(a) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that planning permission is capable of physical implementation;</b></p> <p><b>(b) no enforcement action under the 1990 Act may be taken against development carried out in accordance with that planning permission by reason of such inconsistency, whether inside or outside the Order limits; and</b></p> <p><b>(c) any conditions on that planning permission that are inconsistent with this Order or the authorised development cease to have effect.</b></p>	<p>Applicant at D7 [REP7-053]. The ExA also acknowledges the desire of the Applicant to de-risk the ability to implement the LLAOL planning permission and the Green Horizon Park permission in conjunction with the Proposed Development. However, the ExA considers that to enable parts of these schemes to be built out potentially without any mitigation required by the ES to address an identified harm and delivered through condition, and the removal of the ability of the Council to take appropriate enforcement action would be inappropriate.</p> <p>Furthermore, deletion of these subparagraphs would not prevent the implementation of either of the permissions as the Applicant would have the ability to amend or vary the consents through the Town and Country Planning Act to enable them to be capable of being lawfully implemented in conjunction with the Proposed Development.</p> <p>In respect of 45(3), the ExA does not consider that attempting to control the implementation and enforcement of any potential future development granted planning permission under the 1990 Act is relevant to the development to be permitted. The ExA is of the opinion that</p>



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	<p>development which is the subject matter of that planning permission is capable of physical implementation;</p> <p>(b) no enforcement action under the 1990 Act may be taken against development carried out in accordance with that planning permission by reason of such inconsistency, whether inside or outside the Order limits; and</p> <p>(c) any conditions on that planning permission that are inconsistent with this Order or the authorised development cease to have effect.</p> <p>(3) To the extent that development granted planning permission under the 1990 Act is inconsistent with authorised development which is carried out under this Order or the exercise of any power or right under this Order, the development which is the subject matter of the planning permission may be carried out or used notwithstanding that inconsistency and is deemed not to be a breach of this Order and may not be</p>	<p><del>(3) To the extent that development granted planning permission under the 1990 Act is inconsistent with authorised development which is carried out under this Order or the exercise of any power or right under this Order, the development which is the subject matter of the planning permission may be carried out or used notwithstanding that inconsistency and is deemed not to be a breach of this Order and may not be enforced against under the 1990 Act by reason of such inconsistency.</del></p> <p><b>(4) Notwithstanding the terms of paragraph (3) or any other part of the Order, development carried out, operated or used in accordance with the grant of planning permission under the 1990 Act that is inconsistent with the authorised development under this Order is deemed not to constitute a breach of this Order, and does not prevent the undertaker carrying out the authorised development granted development consent under this Order or exercising any other power or right under this Order.</b></p> <p><del>(5) Where the undertaker identifies an inconsistency between a planning permission and this Order which engages the provisions of paragraphs (2), (3) or (4) as the case may be, it must notify the relevant planning authority as soon as reasonably practicable about the</del></p>	<p>any interaction with the current land use situation at the time any future planning application is submitted can be appropriately considered at such a time.</p> <p>Finally, the ExA does not consider that it has been provided with sufficient information to demonstrate the necessity for this article. Or a situation where it becomes 'physically impossible' to implement either the authorised development or the planning permission for Green Horizons Park, and the need to explicitly restrict the ability to undertake enforcement powers. Whilst it is noted that certain aspects of the GHP permission would not be able to be implemented over parts of the authorised development, the ExA is not persuaded that this would necessarily result in a planning permission being lost, noting paragraph 68 of the Hillside judgement which states:</p> <p><i>"In summary, failure or inability to complete a project for which planning permission has been granted does not make development carried out pursuant to the permission unlawful."</i></p>

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	<p>enforced against under the 1990 Act by reason of such inconsistency.</p> <p>(4) Notwithstanding the terms of paragraph (3) or any other part of the Order, development carried out, operated or used in accordance with the grant of planning permission under the 1990 Act that is inconsistent with the authorised development under this Order is deemed not to constitute a breach of this Order, and does not prevent the undertaker carrying out the authorised development granted development consent under this Order or exercising any other power or right under this Order.</p> <p>(5) Where the undertaker identifies an inconsistency between a planning permission and this Order which engages the provisions of paragraphs (2), (3) or (4) as the case may be, it must notify the relevant planning authority as soon as reasonably practicable about the existence of the inconsistency, and how the undertaker is</p>	<p><del>existence of the inconsistency, and how the undertaker is proceeding in view of that inconsistency in accordance with this article.</del></p> <p><del>(6) In this article—</del></p> <p><del>(a) “Green Horizon Park permission” means planning permission reference 17/02300/EIA or any variation of this permission granted under section 96A or section 73 of the 1990 Act; and</del></p> <p><del>(b) “planning permission” means planning permission granted under the 1990 Act including planning permission deemed to be granted under article 3 (permitted development) and Classes F, G, I, J, K, L, M and N of Part 8 (Transport related development) of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(a).</del></p>	

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	<p>proceeding in view of that inconsistency in accordance with this article.</p> <p>(6) In this article—</p> <p>(a) “Green Horizon Park permission” means planning permission reference 17/02300/EIA or any variation of this permission granted under section 96A or section 73 of the 1990 Act; and</p> <p>(b) “planning permission” means planning permission granted under the 1990 Act including planning permission deemed to be granted under article 3 (permitted development) and Classes F, G, I, J, K, L, M and N of Part 8 (Transport related development) of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(a).</p>		
47	<p><b>Defence to proceedings in respect of statutory nuisance</b></p> <p>(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory</p>	<p><b>Defence to proceedings in respect of statutory nuisance</b></p> <p>(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph</p>	<p>The Applicant [APP-169, table 3.1] advocates that these grounds of nuisance would not be engaged by the Proposed Development. The ExA therefore considers that the statutory authority defence ought not to apply to categories</p>

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	<p>nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (c), (d), (e), (fb), (g), (ga) and (h) of section 79 (1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if -</p>	<p><del>(e)</del>, (d), (e), <del>(fb)</del>, (g), (ga) and <del>(h)</del> of section 79 (1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if -</p>	<p>of nuisance which are not anticipated by the Applicant to arise.</p>
52	<p><b>Arbitration</b> Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal or which falls to be determined under paragraph 37 (appeals to the Secretary of State) of Part 6 (Appeals) of Schedule 2 (requirements) to this Order) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement to be appointed on the application of either party (after giving notice</p>	<p><b>Arbitration</b> <b>Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at Schedule [] (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.</b></p>	<p>The ExA notes the Applicant's response to its request for a schedule setting out the framework and timeframes for arbitration [REP4-057]. However, the ExA considers that a schedule setting out further details on how arbitration would work including providing a framework and appropriate timeframe to enable a fair, impartial, final and binding resolution where a substantive difference between the parties arises would be appropriate. As a result, this article would need amending to reflect the provision of such a schedule.</p>

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	in writing to the other) by the Secretary of State.		
<b>New Articles</b>			
53	n/a	<p><b>Funding</b></p> <ol style="list-style-type: none"> <li>1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either – <ol style="list-style-type: none"> <li>a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or</li> <li>b) an alternative form of security and the amount of the security for the purpose approved by the Secretary of State in respect of liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land.</li> </ol> </li> <li>2) The provisions are – <ol style="list-style-type: none"> <li>a) article 24 (compulsory acquisition of land);</li> <li>b) article 27 (compulsory acquisition of rights etc.);</li> <li>c) article 28 (private rights);</li> <li>d) article 31 (acquisition of subsoil or airspace only);</li> <li>e) article 32 (rights under or over streets);</li> </ol> </li> </ol>	<p>This article would ensure that the undertaker may not exercise a number of powers prior to putting into place a guarantee equal to liabilities upon the undertaker to pay compensation under the relevant provisions, with such a sum to be approved by the Secretary of State or an alternative form of security approved by the Secretary of State.</p> <p>The ExA considers such an article is necessary to ensure that the acquisition of land would not proceed without the relevant funding having been secured.</p>

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		<ul style="list-style-type: none"> <li>f) article 33 (temporary use of land for carrying out the authorised project);</li> <li>g) article 34 (temporary use of land for maintaining the authorised development); and</li> <li>h) article 36 (statutory undertakers).</li> <li>3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such person.</li> <li>4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.</li> </ul>	
<b>SCHEDULES</b>			
Schedule 1			
Work No. 5b (01) — Enhancements to Wigmore Valley Park.	<b>Work No. 5b (01)</b> — Enhancements to Wigmore Valley Park. Within the area of land shown on the Works Plans as Work No. 5b(01), the provision of structural landscaping to include— (a) soft landscaping;	<b>Work No. 5b (01)</b> — Enhancements to Wigmore Valley Park. Within the area of land shown on the Works Plans as Work No. 5b(01), the provision of structural landscaping to include— (a) soft landscaping; (b) erection of boundary treatments (including fencing);	The Strategic Landscape Masterplan [APP-172, provision of open space] shows as (b) enhanced surfacing and facilities including improved skate park, play facilities and Wigmore Pavilion (proposed under planning consent for Green Horizons Park) and due to be delivered as part of work No.5b (01). Whilst Wigmore Pavilion falls outside the

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	(b) erection of boundary treatments (including fencing); (c) earthworks for the creation of screening bunds; (d) installation of habitat creation measures; (e) hard landscape finishes and other improvements to footpaths and multi-use tracks; and (f) installation of street furniture and signage.	(c) earthworks for the creation of screening bunds; (d) installation of habitat creation measures; (e) hard landscape finishes and other improvements to footpaths and multi-use tracks; <del>and</del> (f) installation of street furniture and signage; <b>and</b> <b>(g) play facilities and skate park.</b>	red line boundary, the proposed skate park and play facilities would be located within the red line boundary. Given these works are included in the strategic landscape masterplan, the ExA considers that to ensure they are delivered Work No. 5b (01) should be expanded to include them.
Airport Operational Roads Work No. 6a (1)	Work No. 6a (01) — Airport Access Road. To include improvements and reconfiguration of the roundabout junction between A1081 New Airport Way, Airport Way and Percival Way to create a form-arm signalised junction.	Work No. 6a (01) — Airport Access Road. To include improvements and reconfiguration of the roundabout junction between A1081 New Airport Way, Airport Way and Percival Way to create a <del>form</del> <b>four</b> -arm signalised junction.	To correct an error.
Offsite Highway Works Work No. 6e	Work No. 6e — Within the area of land shown on the Works Plans as Work No. 6e, various offsite highway works, including works to— (a) Windmill Road and Kimpton Road, including the removal of the mini-roundabout and replacement with a signalised junction and	Work No. 6e — Within the area of land shown on the Works Plans as Work No. 6e, various offsite highway works, including works to— (a) Windmill Road and Kimpton Road, including the removal of the mini-roundabout and replacement with a signalised junction and realignment and widening of Windmill Road and Kimpton Road; (b) A1081 New Airport Way, B653 and Gipsy Lane. To include, the realignment and	Due to the significant number of relevant representations expressing concerns regarding the extent of the proposed works to Eaton Green Road, Wigmore Lane and Crawley Green Road and the lack of sufficient justification for these works the ExA considers they are unnecessary and therefore should be deleted from the draft DCO.

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	<p>realignment and widening of Windmill Road and Kimpton Road;</p> <p>(b) A1081 New Airport Way, B653 and Gypsy Lane. To include, the realignment and widening of A1081 New Airport Way (to provide additional traffic lanes), the realignment and widening of A505 Gypsy Lane (to provide additional traffic lanes), the reshaping of the A1081 New Airport Way central reserve islands including the realignment of barriers and the reshaping of the A505 Gypsy Lane splitter island;</p> <p>(c) A1081 New Airport Way, A505 Kimpton Road and Vauxhall Way, including the construction of a give-way left turn lane into A505 Kimpton Road;</p> <p>(d) Eaton Green Road and Lalleford Road, including the removal of the existing mini-roundabout junction and conversion to a signalised junction and localised realignment of the carriageway;</p>	<p>widening of A1081 New Airport Way (to provide additional traffic lanes), the realignment and widening of A505 Gypsy Lane (to provide additional traffic lanes), the reshaping of the A1081 New Airport Way central reserve islands including the realignment of barriers and the reshaping of the A505 Gypsy Lane splitter island;</p> <p>(c) A1081 New Airport Way, A505 Kimpton Road and Vauxhall Way, including the construction of a give-way left turn lane into A505 Kimpton Road;</p> <p><b><del>(d) Eaton Green Road and Lalleford Road, including the removal of the existing mini-roundabout junction and conversion to a signalised junction and localised realignment of the carriageway;</del></b></p> <p><b><del>(e) Wigmore Lane and Crawley Green Road. To include works to—</del></b></p> <p><b><del>(i) the Junction of Wigmore and Crawley Green Road, including the removal of the existing roundabout junction and conversion to a signalised junction, the provision of signalised pedestrian crossings, the provision of give-way left-turn flares and the realignment and widening of the carriageway;</del></b></p> <p><b><del>(ii) Wigmore Lane, including the realignment and widening of a lane and removal of a bus stop layby; and</del></b></p> <p><b><del>(iii) to the junction of Wigmore Lane and Raynham Way, including the removal of the existing roundabout junction and</del></b></p>	



Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	<p>(e) Wigmore Lane and Crawley Green Road. To include works to—</p> <p>(i) the Junction of Wigmore and Crawley Green Road, including the removal of the existing roundabout junction and conversion to a signalised junction, the provision of signalised pedestrian crossings, the provision of give-way left-turn flares and the realignment and widening of the carriageway;</p> <p>(ii) Wigmore Lane, including the realignment and widening of a lane and removal of a bus stop layby; and</p> <p>(iii) to the junction of Wigmore Lane and Raynham Way, including the removal of the existing roundabout junction and conversion to a signalised junction, the provision of signalised pedestrian crossing and the realignment and widening of the carriageway;</p> <p>(f) Eaton Green Road and Wigmore Lane, including works to the junction of Wigmore Lane and existing Asda, the removal of the existing roundabout</p>	<p><del>conversion to a signalised junction, the provision of signalised pedestrian crossings and the realignment and widening of the carriageway;</del></p> <p><del>(f) Eaton Green Road and Wigmore Lane, including works to the junction of Wigmore Lane and existing Asda, the removal of the existing roundabout junction and conversion to a signalised junction the provision of signalised pedestrian crossings and the realignment and widening of the carriageway;</del></p> <p><b>(g d)</b> A1081/London Road (North), including, realignment and widening to the east side of the roundabout circulatory carriageway, partial signalisation of the roundabout, on the Newlands Park and southern arms and amendments to road marking;</p> <p><del>(h e)</del> A1081/London Road (South), including partial signalisation of the existing roundabout (no kerb line amendments required) and road marking amendments;</p> <p><del>(i f)</del> Windmill Road/Manor Road/St. Mary's Road/Crawley Green Road, including realignment and widening of St. Mary's Road and Windmill Road, realignment and widening of the circulatory carriageway of the junction, amendments and extensions to various pedestrian subway portals, alterations to existing footways and full signalisation of the roundabout junction;</p> <p><b>(j) Crawley Green Road/Lalleford Road, including replacement of the mini</b></p>	

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	<p>junction and conversion to a signalised junction the provision of signalised pedestrian crossings and the realignment and widening of the carriageway;</p> <p>(g) A1081/London Road (North), including, realignment and widening to the east side of the roundabout circulatory carriageway, partial signalisation of the roundabout, on the Newlands Park and southern arms and amendments to road marking;</p> <p>(h) A1081/London Road (South), including partial signalisation of the existing roundabout (no kerb line amendments required) and road marking amendments;</p> <p>(i) Windmill Road/Manor Road/St. Mary's Road/Crawley Green Road, including realignment and widening of St. Mary's Road and Windmill Road, realignment and widening of the circulatory carriageway of the junction, amendments and extensions to various pedestrian subway portals, alterations to existing</p>	<p><del>roundabout with a three-arm signalised junction, minor kerb line amendments along Crawley Green Road and Lalleford Road and amendments to road markings;</del></p> <p><b>(k g)</b> A602 Park Way/A505 Upper Tilehouse Street, including minor widening to the Park Way/Upper Tilehouse Street roundabout entries, to provide increased lengths of two lane entry and amendments to existing retaining structure and vehicle restraint system;</p> <p><b>(l-h)</b> A505 Moormead Hill/B655 Pirton Road/Upper Tilehouse Street, including minor widening and realignment of Upper Tilehouse Street entry to provide an increased length of two lane entry to the existing mini-roundabout;</p> <p><b>(m-i)</b> A602 Park Way/Stevenage Road, including minor widening of carriageway and realignment of various kerb lines on A505 Park Way, Hitchin Hill and A602 Stevenage Road to provide increased lengths of two lane entry to the roundabout;</p> <p><b>(n j)</b> 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;</p>	

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	<p>footways and full signalisation of the roundabout junction;</p> <p>(j) Crawley Green Road/Lalleford Road, including replacement of the mini roundabout with a three-arm signalised junction, minor kerb line amendments along Crawley Green Road and Lalleford Road and amendments to road markings;</p> <p>(k) A602 Park Way/A505 Upper Tilehouse Street, including minor widening to the Park Way/Upper Tilehouse Street roundabout entries, to provide increased lengths of two lane entry and amendments to existing retaining structure and vehicle restraint system;</p> <p>(l) A505 Moormead Hill/B655 Pirton Road/Upper Tilehouse Street, including minor widening and realignment of Upper Tilehouse Street entry to provide an increased length of two lane entry to the existing mini-roundabout;</p> <p>(m) A602 Park Way/Stevenage Road, including minor widening of</p>	<p>(<del>e</del> k) M1 J10, including widening to the A1081 westbound carriageway, to provide two segregated left turn lanes, widening to the A1081 westbound carriageway, to provide two segregated left turn lanes onto the M1 southbound on-slip and amendments to road markings on the southbound on-slip to increase capacity;</p> <p>(<del>p</del> l) M1 J10, including widening of the western circulatory carriageway to provide five lanes including realignment of the A1081 exit from the roundabout, to enable three lanes to enter the A1081 from the roundabout, removal of the segregated left turn lane from the M1 southbound, and conversion of the junction between the southbound off-slip and roundabout to a signalised junction and provision of two southbound merging lanes to the M1;</p> <p>(<del>q</del> m) Eaton Green Road/Frank Lester Way, including replacement of the roundabout with a three-arm signalised junction and minor kerb line amendments along Eaton Green Road and Frank Lester Way (with Frank Lester Way to be made one-way northbound) and amendments to road markings; and</p> <p>(<del>r</del> n) A505 Vauxhall Way/Eaton Green Road, including partial signalisation of the roundabout.</p>	

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	<p>carriageway and realignment of various kerb lines on A505 Park Way, Hitchin Hill and A602 Stevenage Road to provide increased lengths of two lane entry to the roundabout;</p> <p>(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;</p> <p>(o) M1 J10, including widening to the A1081 westbound carriageway, to provide two segregated left turn lanes, widening to the A1081 westbound carriageway, to provide two segregated left turn lanes onto the M1 southbound on-slip and amendments to road markings on the southbound on-slip to increase capacity;</p>		

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	<p>(p) M1 J10, including widening of the western circulatory carriageway to provide five lanes including realignment of the A1081 exit from the roundabout, to enable three lanes to enter the A1081 from the roundabout, removal of the segregated left turn lane from the M1 southbound, and conversion of the junction between the southbound off-slip and roundabout to a signalised junction and provision of two southbound merging lanes to the M1;</p> <p>(q) Eaton Green Road/Frank Lester Way, including replacement of the roundabout with a three-arm signalised junction and minor kerb line amendments along Eaton Green Road and Frank Lester Way (with Frank Lester Way to be made one-way northbound) and amendments to road markings; and</p> <p>(r) A505 Vauxhall Way/Eaton Green Road, including partial signalisation of the roundabout.</p>		

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
Ancillary Works	(a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;	(a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any <del>kerb</del> , footpath, footway, cycle track or verge within the street; altering the level of any such kerb or increasing the width of any such <del>kerb</del> , footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;	The ExA notes the Applicant's response [REP3-073] to the previous request to delete this wording. The ExA is of the opinion that a kerb is a physical object of set dimensions and so cannot be changed in the same way that a width of a verge or footpath can be changed and therefore should be omitted from the list.
Schedule 2			
1	n/a	<b>“landscape mitigation” means all the work numbers listed under Work No. 5, hard and soft landscaping identified in individual work numbers in Schedule 1 to the Order and areas identified in Figures 14.10 to 14.13 inclusive in Chapter 14 Landscape and Visual Figures.</b>	The ExA considers that clarity is needed on the parts of the Proposed Development that would be required to be submitted for approval under Requirement 8, noting this could include all aspects of Work No. 5, hard and soft landscaping identified in individual work numbers, the areas identified in Figures 14.10 – 14.13 in Chapter 14 Landscape and Visual Figures [REP4-037] or a combination of all three.
1	n/a	<b>“light obstruction assessment” means Appendix 5.2 Part A of the environmental statement and Appendix 5.2 Part B of the environmental statement</b>	The ExA has recommended a new requirement that refers to the Light Obtrusion Assessment and as such a definition for this needs to be included in requirement 1.
1	n/a	<b>“specified authorities” means Central Bedfordshire Council, Dacorum Borough</b>	This definition is currently included in requirement 5(7). The ExA considers it

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		<b>Council, Hertfordshire County Council, Luton Borough Council and North Hertfordshire District Council;</b>	should be moved to requirement 1 (Interpretation) as the ExA is suggesting the deletion or 5(7) and also the use of specified authorities in other requirements.
1	n/a	<b>“substantially in accordance with” means that the plan or detail to be submitted should in the main accord with the outline document and where it varies from the outline document should not give rise to any new or any materially different environmental effects in comparison with those reported in the Environmental Statement.</b>	The ExA notes the Applicant's explanation [EV17-003] for its need to include the phrase 'substantially in accordance with' in requirements which require the submission of further detail based on an outline plan or document. To enable this flexibility and to ensure compliance with the ES the ExA considers that it would be appropriate for a definition to be included in requirement 1.
2 (1)	(1) The undertaker may apply to the relevant planning authority for approval to amend the following— (a) the air noise management plan; (b) the design principles; (c) the code of construction practice; (d) the cultural heritage management plan; (e) the fixed plant noise management plan; (f) any other plans, details or scheme which require approval by the relevant	(1) The undertaker may apply to the relevant planning authority for approval to amend <del>the following—</del> <del>(a) the air noise management plan;</del> <del>(b) the design principles;</del> <del>(c) the code of construction practice;</del> <del>(d) the cultural heritage management plan;</del> <del>(e) the fixed plant noise management plan;</del> <del>(f) any other</del> <b>(a) all</b> plans, details or scheme which require approval by the relevant planning authority in accordance with any paragraph in Part 2 or Part 4 of this Schedule; and <del>(g)</del> <b>(b)</b> the parameters specified in paragraph 6 (parameters of authorised development) of this Schedule.	The plans listed in (a) to (e) are plans or details which require approval by the relevant planning authority in accordance with any paragraph in Part 2 or Part 4 of the Schedule and so would be captured by (f). To improve precision of drafting the ExA considers that (a) to (e) could be deleted.

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	planning authority in accordance with any paragraph in Part 2 or Part 4 of this Schedule; and (g) the parameters specified in paragraph 6 (parameters of authorised development) of this Schedule.		
2 (4)	(4) Where an application is made under sub-paragraph (1) to amend a plan, detail or scheme which requires approval by the relevant planning authority in accordance with any paragraph in Part 2 or Part 4 of this Schedule, where the paragraph specifies that consultation with a consultee is required, that consultee must be consulted prior to any approval being given under sub-paragraph (1).	(4) Where an application is made under sub-paragraph (1) to amend a plan, detail or scheme which requires approval by the relevant planning authority in accordance with any paragraph in Part 2 or Part 4 of this Schedule, where the paragraph specifies that consultation with a consultee is required, that consultee must be consulted <b>by the relevant planning authority</b> prior to any approval being given under sub-paragraph (1).	The ExA considers the insertion of the additional wording improves the precision of the drafting as it clarifies that it is the relevant planning authority who has to undertake the consultation not the undertaker.
5	<b>Detailed design, phasing and implementation</b>	<b>Detailed design, phasing and implementation</b>	The ExA considers that Requirement 5(6) and (7) should become a standalone requirement (see new requirements section of this table) and as such the title of the requirement would need to be amended to reflect this.
5(1)	(1) No part of the authorised development is to commence until an application containing the detailed design of that part	(1) No part of the authorised development is to commence until an application containing the detailed design of that part has been submitted to and approved in writing by the	The ExA considers the drafting to be unnecessary.



Reference	Text as set out in the draft DCO	ExA's recommended amendment/ insertion	Reasons and notes
	has been submitted to and approved in writing by the relevant planning authority, following consultation with the relevant highway authority on matters related to its functions.	relevant planning authority, following consultation with the relevant highway authority <del>on matters related to its functions.</del>	
5(2)		Add as an additional criterion to the list in 5(2): <b>A detailed 'Glint and Glare' assessment in respect of any part comprising solar energy production or canopies to support photovoltaic panels.</b>	The Glint and Glare Assessment [REP4-040, paragraph 2.2.2] explains that it is a preliminary study and that a further assessment would be carried out at detailed design stage. As currently drafted the submission of this assessment would not be secured in the draft DCO.
5(2)(c)	(c) where relevant to the Schedule 1 works to which the application relates, a report setting out how the design review process set out in the design principles has been taken into account;	<del>(c) where relevant to the Schedule 1 works to which the application relates,</del> <b>In respect of Works Nos. 3b(01), 3b(02), 3f and 4a,</b> a report setting out <del>how the design review process set out in the design principles has been taken into account;</del> <b>(i) the design approach and how the design principles have been incorporated into the final design; and</b> <b>(ii) details of the design review process secured under Schedule [] of this Order and how the design review process has informed the final design.</b>	The ExA notes the inclusion of a design review process in the Deadline (D) 7 submissions. The recommended amendments are to improve precision.  Reference has been made to Schedule [] as it is considered by the ExA that Schedule 11 in the draft Section 106 agreement [REP7-074] could be secured on the face of the Order and inserted as a new schedule.
5(6) and (7)	(6) The undertaker must provide the specified authorities with— (a) an expected programme of works for the initial five-year period as soon as reasonably	<del>(6) The undertaker must provide the specified authorities with— (a) an expected programme of works for the initial five-year period as soon as reasonably practicable following the service of notice under article 44(1);</del>	The ExA considers that these subparagraphs would be better as a standalone requirement – see new requirements section of this table for comments/ amendments to the proposed drafting.

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	<p>practicable following the service of notice under article 44(1);</p> <p>(b) an expected programme of works for each subsequent five-year period, prior to the completion of the previous five-year period;</p> <p>(7) In paragraph (6), "specified authorities" means Central Bedfordshire Council, Dacorum Borough Council, Hertfordshire County Council, Luton Borough Council and North Hertfordshire District Council.</p>	<p><del>(b) an expected programme of works for each subsequent five-year period, prior to the completion of the previous five-year period;</del></p> <p><del>(7) In paragraph (6), "specified authorities" means Central Bedfordshire Council, Dacorum Borough Council, Hertfordshire County Council, Luton Borough Council and North Hertfordshire District Council.</del></p>	
7(2)	<p>(2) No part of the authorised development may commence until the following management plans have been developed for that part, substantially in accordance with the outlines of those plans provided in the code of construction practice and have been approved in writing by the relevant planning authority following consultation with the relevant highway authority on matters related to its functions—</p>	<p>(2) No part of the authorised development may commence until the following management plans have been developed for that part, substantially in accordance with the outlines of those plans provided in the code of construction practice and have been approved in writing by the <del>relevant planning authority</del> <b>Luton Borough Council</b> following consultation with the <b>specified authorities</b>, relevant highway authority <b>and other relevant consultees</b> <del>on matters related to its functions—</del></p> <p>(a) framework materials management plan;</p> <p>(b) carbon efficiency plan;</p> <p>(c) construction surface water management strategy;</p>	<p>The purpose of the Code of Construction Practice (CoCP) is to manage the construction process and as such the effects would not be confined to a single relevant planning authority. As currently drafted the use of relevant planning authority could result in the CoCP needing to be submitted to and approved by each of the host authorities. In order to streamline the process, the ExA considers that the discharge of this requirement should rest with Luton Borough Council (LBC) as the main host authority but in consultation with the other host authorities. In addition, the ExA considers that LBC may need to consult a</p>

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	<p>(a) framework materials management plan;</p> <p>(b) carbon efficiency plan;</p> <p>(c) construction surface water management strategy;</p> <p>(d) construction noise and vibration management plan;</p> <p>(e) community engagement plan;</p> <p>(f) emergency plan;</p> <p>(g) pollution incident control plan;</p> <p>(h) dust management plan;</p> <p>(i) site waste management plan (to be substantially in accordance with the outline site waste management plan); and</p> <p>(j) soil management plan (to be substantially in accordance with the outline soil management plan).</p>	<p>(d) construction noise and vibration management plan;</p> <p>(e) community engagement plan;</p> <p>(f) emergency plan;</p> <p>(g) pollution incident control plan; and</p> <p>(h) dust management plan;</p> <p><b>(3) No part of the authorised development may commence until the following management plans have been developed for that part, substantially in accordance with the outlines of those plans and been approved in writing by Luton Borough Council following consultation with the specified authorities, relevant highway authority and other relevant consultees -</b></p> <p>(a) site waste management plan (to be substantially in accordance with the outline site waste management plan); <del>and</del></p> <p>(b) soil management plan (to be substantially in accordance with the outline soil management plan); <b>and</b></p> <p><b>(c) outline strategy report for groundwater, ground gas and leachate monitoring.</b></p>	<p>number of bodies such as the Environment Agency, Thames Water, Affinity Water etc for a number of these plans.</p> <p>The outlines of the site waste management plan and soil management plan do not form part of the CoCP and as a result the ExA considers this needs to be reflected in the drafting. In addition, as currently drafted the DCO does not include a mechanism for submitting and approving the details of the outline strategy report for groundwater, ground gas and leachate monitoring so the ExA has included it in this list. Alternatively, the Applicant may wish to consider redrafting these as standalone requirements as has been done for other outline documents that are not included in the CoCP eg outline landscape and biodiversity plan.</p>
8(2)	<p>(2) The landscaping scheme approved under sub-paragraph (1) must be in accordance with the principles set out in the strategic landscape masterplan and the design principles, and must include details of -</p>	<p>(2) The landscaping scheme approved under sub-paragraph (1) must be in accordance with the principles set out in the strategic landscape masterplan and the design principles, and must include details of –</p> <p>(d) hard landscaping and materials, <b>including colour, boundary treatment, minor structures and street furniture;</b> <del>and</del></p>	<p>(d) Boundary treatment is included as part of the landscaping and mitigation work numbers and the ExA considers it appropriate that details are submitted for approval. The ExA considers that 'Minor' should be deleted on the grounds of precision.</p> <p>(f) The ExA notes the Applicant's response [REP3-073] although no</p>

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
		(e) a timetable for the implementation of the landscaping works; <b>(f) change to existing land levels, including cross sections showing slope profiles and gradients of any permanent earthworks; and</b> <b>(g) for Work No. 5b(02) a statement setting out how the landscape design would ensure that the replacement land would be no less advantageous to that which it is replacing.</b>	response was included at D4. Given the extent of earth works proposed, the ExA considers that the submission of these details would be necessary to allow the full extent of changes to land levels within the Order Limits to be properly considered. (g) The proposed drafting is to address concerns raised throughout the Examination by the ExA about how ensuring that the replacement land for Wigmore Valley Park would be no less advantageous to existing users of Wigmore Valley Park would be secured.
8(4)	(4) The authorised development must be constructed in accordance with the landscaping scheme approved under sub-paragraph (1).	(4) The authorised development must be constructed in accordance with the landscaping scheme approved under sub-paragraph (1), <b>and thereafter maintained in accordance with the relevant landscape and biodiversity management plan for that part approved under paragraph 9.</b>	Following the change to the draft DCO at D4 [REP4-003], the requirement as drafted [REP7-003] does not include any management or maintenance for the landscape mitigation scheme once implemented. The ExA considers that the recommended change would provide a link to requirement 9 that would contain this information.
9(1)	(1) No part of the authorised development may commence until for that part a landscape and biodiversity management plan has been submitted and approved in writing by the relevant planning authority.	(1) No part of the authorised development may commence, <b>nor may powers under article 22 (felling or lopping of trees and removal of hedgerows) be exercised</b> , until for that part a landscape and biodiversity management plan has been submitted <b>to</b> and approved in writing by the relevant planning authority.	To improve precision and clarity.

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
9(2)	(2) The landscape and biodiversity management plan approved under sub-paragraph (1) must be substantially in accordance with the outline landscape and biodiversity management plan.	(2) The landscape and biodiversity management plan approved under sub-paragraph (1) must be substantially in accordance with the outline landscape and biodiversity management plan. <b>The plan must include proposals to achieve a minimum of 10% biodiversity net gain for habitats and a minimum of 10% biodiversity net gain for hedgerows during the operation of the authorised development</b>	To secure on the face of the order the benefit of 10% biodiversity net gain proposed by the Applicant in Chapter 8 of the Environmental Statement (ES) [AS-027].
9	(4) Any tree or shrub planted as part of a landscaping scheme, that within the specified period after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise agreed in writing with the relevant planning authority.	(4) Any tree or shrub planted as part of a landscaping scheme, that within the specified period after planting, is removed, <b>uprooted, destroyed,</b> dies or becomes in the opinion of the relevant planning authority seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise agreed in writing with the relevant planning authority.	To cover all eventualities that might result in the need to replace planting.
9	(5) In this paragraph, "specified period" means a period of 5 years, or such other period as may be specified in accordance with the landscaping and biodiversity management plan.	(5) In this paragraph, "specified period" means: <b>(a) a period of 30 years in respect of the works implemented under Work No. 5b(01), Work No. 5c(01), Work No. 5c(02), Work No. 5d(01), Work No. 5d(02) and</b>	The ExA notes the changes to the draft DCO at D4 [REP4-003] which included the addition of 'specified period' to allow for other periods of time to be prescribed. However, given the importance of the landscaping proposals to reduce identified significant visual effects, the

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
		<p><b>Work No.5e in Schedule 1 to this Order; and</b>  <b>(b) a period of 5 years in all other respects,</b>  or such other period as may be specified in accordance with the landscaping and biodiversity management plan.</p>	<p>ExA considers that the default time period for the works prescribed in sub-paragraph (a) should be 30 years given that works would be planted in early phases of the development and how visual effects have been considered at the design year (2056).</p> <p>Work No.5b(02) has been specifically excluded from sub-paragraph (a) noting that a separate arrangement for the operational management of the replacement land is proposed in Schedule 3 of the draft Section 106 agreement.</p> <p>The period covered in sub-paragraph 5(b) relates to any other landscaping specified in remaining work numbers.</p>
10	<p>(2) Where a European protected species or nationally protected species is shown to be present following the pre-construction survey referred to in sub-paragraph (1), the relevant part of the authorised development must not commence until a scheme of mitigation measures, substantially in accordance with the relevant ecological mitigation strategies, has been submitted to and approved by the relevant planning authority</p>	<p>(2) Where a European protected species or nationally protected species is shown to be present following the pre-construction survey referred to in sub-paragraph (1), the relevant part of the authorised development must not commence until a scheme of mitigation measures, substantially in accordance with the relevant ecological mitigation strategies, has been submitted to and approved by the relevant planning authority <b>in consultation with Natural England</b> or, where appropriate, a protected species licence has been granted by Natural England.</p>	<p>The ExA notes the Applicant's response to this request [REP4-057] however for precision the ExA considers that reference to consultation with Natural England should be included.</p>

Reference	Text as set out in the draft DCO	ExA's recommended amendment/ insertion	Reasons and notes
	or, where appropriate, a protected species licence has been granted by Natural England.		
11	<b>'Contaminated land and groundwater'</b>	<b>'Previously unidentified land contamination and contaminated groundwater'</b> <del>'Contaminated land and groundwater'</del>	To improve precision and clarity.
11(2)	Where the undertaker determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency and the relevant water undertaker on matters related to their functions.	Where the undertaker determines that remediation of the <del>contaminated land</del> <b>land contamination</b> is necessary <b>consequent to the risk assessment in 11(1)</b> , a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency and the relevant water undertaker <del>on matters related to their functions</del> .	To improve precision and to ensure that 11(2) relies on 11(1).  The ExA considers that the use of the phrase 'on matters related to their function' is unnecessary.
11(4)	(4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation scheme in sub-paragraph (2) are complete and identifying any requirements for longer-term monitoring of pollutant	(4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation scheme in sub-paragraph (2) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action must be submitted to and approved in writing by the relevant planning	The ExA considers the drafting to be unnecessary.

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	linkages, maintenance and arrangements for contingency action must be submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency and the relevant water undertaker on matters related to their functions.	authority, following consultation with the Environment Agency and the relevant water undertaker <del>on matters related to their functions.</del>	
11(5)	Prior to the relevant part of the authorised development being occupied a verification report demonstrating the completion of works set out in the approved remediation scheme and the effectiveness of the remediation will be submitted to, and approved in writing by, the relevant planning authority following consultation with the Environment Agency and the relevant water undertaker on matters related to their functions.	<del>Prior to the relevant part of the authorised development being occupied. The relevant part of the authorised development may not be brought into use until</del> a verification report demonstrating the completion of works set out in the approved remediation scheme and the effectiveness of the remediation will be submitted to, and approved in writing by, the relevant planning authority following consultation with the Environment Agency and the relevant water undertaker <del>on matters related to their functions.</del>	The ExA considers that given the nature of the Proposed Development the use of the phrase 'occupied' is not applicable and the use of the phrase 'brought into use' would be more appropriate.  The ExA considers that the use of the phrase 'on matters related to their function' is unnecessary.
12	<b>Surface and foul water drainage</b> (1) No part of the authorised development may commence until for that part written details of a surface and foul water drainage plan, including means of pollution control and	<b>Surface and foul water drainage</b> (1) No part of the authorised development may commence until for that part written details of a surface and foul water drainage plan, including means of pollution control and monitoring, have been submitted to and approved in writing by the relevant planning authority following consultation with the	The ExA considers that the use of the phrase 'on matters related to their function' is unnecessary.  To improve precision and to secure compliance with the drainage design statement as a whole.



Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	<p>monitoring, have been submitted to and approved in writing by the relevant planning authority following consultation with the Environment Agency, the lead local flood authority and the relevant water and sewerage undertakers in matters related to their functions.</p> <p>(2) The details submitted under sub-paragraph (1) must be in accordance with the drainage principles set out in the design principles, and must include—</p> <p>(a) the specification for the surface and foul water drainage plant, including performance specifications for discharge levels in accordance with paragraph 7.5-7.7 of the drainage design statement;</p> <p>(b) details on the means of long-term monitoring to be carried out; and</p> <p>(c) details on the mitigation measures to be implemented if the performance specifications referred to in sub-paragraph (a) are not met.</p> <p>(3) The authorised development must be carried</p>	<p>Environment Agency, the lead local flood authority and the relevant water and sewerage undertakers <del>in matters related to their functions.</del></p> <p>(2) The details submitted under sub-paragraph (1) must be in accordance with the drainage principles <del>set out in the design principles,</del> and must include—</p> <p>(a) <del>the specification for the surface and foul water drainage plant, including performance specifications for discharge levels in accordance with paragraph 7.5-7.7 of the drainage design statement;</del> <b>compliance with the drainage design statement unless otherwise agreed;</b></p> <p>(b) details on the means of long-term monitoring to be carried out; and</p> <p>(c) details on the mitigation measures to be implemented if the performance specifications referred to in sub-paragraph (a) are not met.</p> <p>(3) The authorised development must be carried out in accordance with the details approved under sub-paragraph (1).</p> <p><del>(4) In paragraph 12(2), surface and foul water drainage plant<sup>27</sup> means the surface and foul water drainage plant to be constructed under Work Nos. 4d and 4v, or any other water treatment plant, drainage system and its treatment and discharge, and any other related works to be constructed under the terms of this Order.</del></p>	<p>In deleting (2) (a) (4) becomes unnecessary and should be deleted.</p>

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	<p>out in accordance with the details approved under sub-paragraph (1).</p> <p>(4) In paragraph 12(2), "surface and foul water drainage plant" means the surface and foul water drainage plant to be constructed under Work Nos. 4d and 4v, or any other water treatment plant, drainage system and its treatment and discharge, and any other related works to be constructed under the terms of this Order.</p>		
13(1)	<p>No part of the authorised development may commence until a construction traffic management plan for the construction of that part has been submitted to and approved in writing by the relevant planning authority, following consultation with the relevant highway authority on matters related to its function.</p>	<p>No part of the authorised development may commence until a construction traffic management plan for the construction of that part has been submitted to and approved in writing by <del>the relevant planning authority</del> <b>Luton Borough Council</b>, following consultation with the <b>specified authorities, Buckinghamshire Council</b> and relevant highway authority <del>on matters related to its function</del>.</p>	<p>The effects of construction traffic would not be confined to a single relevant planning authority. As currently drafted the use of relevant planning authority could result in the construction traffic management plan needing to be submitted to and approved by each of the host authorities. To streamline the process, the ExA considers that the discharge of this requirement should rest with LBC as the main host authority but in consultation with the other host authorities and Buckinghamshire Council.</p> <p>The ExA considers that the use of the phrase 'on matters related to their function' is unnecessary.</p>

Reference	Text as set out in the draft DCO	ExA's recommended amendment/ insertion	Reasons and notes
14(1)	No part of the authorised development may commence until a construction workers travel plan for the construction of that part has been submitted to and approved in writing by the relevant planning authority, following consultation with the relevant highway authority on matters related to its function.	No part of the authorised development may commence until a construction workers travel plan for the construction of that part has been submitted to and approved in writing by <del>the relevant planning authority</del> <b>Luton Borough Council</b> , following consultation with the <b>specified authorities, Buckinghamshire Council and</b> relevant highway authority <del>on matters related to its function.</del>	<p>The effects of construction traffic would not be confined to a single relevant planning authority. As currently drafted the use of relevant planning authority could result in the construction workers traffic plan needing to be submitted to and approved by each of the host authorities. To streamline the process the ExA considers that the discharge of this requirement should rest with LBC as the main host authority but in consultation with the other host authorities and Buckinghamshire Council.</p> <p>The ExA considers that the use of the phrase 'on matters related to their function' is unnecessary.</p>
15(1)	(1) The authorised development must be carried out in accordance with the cultural heritage management plan and any written scheme of investigation approved under sub-paragraph (2).	(1) The authorised development must be carried out in accordance with the cultural heritage management plan and any <b>site-specific</b> written scheme of investigation approved under sub-paragraph (2).	The Cultural Heritage Management Plan (CHMP)[REP4-020] refers to site specific written schemes of investigation therefore this terminology should be used in the draft DCO to ensure consistent use of terminology.
15(2)	(2) Where the cultural heritage management plan provides for the subsequent approval of the relevant planning authority of a written scheme of investigation for certain specified elements of the authorised development, such parts of the authorised development are not to	(2) Where the cultural heritage management plan provides for the subsequent approval of the relevant planning authority of a <b>site-specific</b> written scheme of investigation for certain specified elements of the authorised development, such parts of the authorised development are not to commence until for the construction of that part a <b>site-specific</b> written scheme for the investigation of areas	The ExA notes the Applicant's response [REP3-073] to the previous request to delete 'reflect'. The ExA notes that the CHMP, particularly chapter 4, contains various details and requirements of what a site-specific written scheme of investigation should include and considers the suggested wording is more precise.

Reference	Text as set out in the draft DCO	ExA's recommended amendment/ insertion	Reasons and notes
	commence until for the construction of that part a written scheme for the investigation of areas of archaeological interest, reflecting the cultural heritage management plan has been submitted to and approved in writing by the relevant planning authority following consultation, where applicable, with Historic England on matters related to its functions.	of archaeological interest, <b>incorporating the details set out in</b> the cultural heritage management plan, has been submitted to and approved in writing by the relevant planning authority following consultation, where applicable, with Historic England <b>on matters related to its functions.</b>	The ExA considers that the use of the phrase 'on matters related to its function' is unnecessary.
15(3)	(3) A copy of any analysis, reporting, publication or archiving required as part of a written scheme of investigation referred to in sub-paragraph (2) must be deposited with the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority or specified in the written scheme of investigation referred to in sub-paragraph (2).	(3) A copy of any analysis, reporting, publication or archiving required as part of a written scheme of investigation referred to in sub-paragraph (2) must be deposited with the relevant planning authority within one year of the date of completion of the <b>relevant part of the authorised development to which the site-specific written scheme of investigation relates</b> , or such other period as may be agreed in writing by the relevant planning authority or specified in the written scheme of investigation referred to in sub-paragraph (2).	The ExA notes that the date of completion of the authorised development in the core planning case is 2043 and considers that it would be more precise to stipulate the submission of any reporting required by a site-specific written scheme of investigation (SSWSI) within one year following the completion of works to which the SSWSI relates, particularly those taking place in earlier stages of the Proposed Development.
16(1)	(1) No part of the authorised development comprising Work No. 1b may commence until—	(1) No part of the authorised development comprising Work No. 1b may commence until— (a) a remediation strategy; and	The ExA considers the drafting to be unnecessary.

Reference	Text as set out in the draft DCO	ExA's recommended amendment/ insertion	Reasons and notes
	(a) a remediation strategy; and (b) a foundation works risk assessment, for the former Eaton Green Landfill has been submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency and the relevant water undertaker on matters related to their functions.	(b) a foundation works risk assessment, for the former Eaton Green Landfill has been submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency and the relevant water undertaker <del>on matters related to their functions.</del>	
17	"Monitoring Report" means a report submitted to the ESG containing monitoring and assessments of whether a Level 1 Threshold, Level 2 Threshold, or Limit have been exceeded in accordance with the Monitoring Plan;	"Monitoring Report" means a report submitted to the ESG, containing monitoring and Assessments <b>prepared by competent persons</b> , of whether a Level 1 Threshold, Level 2 Threshold, or Limit have been exceeded in accordance with the Monitoring Plan;	Use of 'competent persons' is included to ensure that reliance can be placed on the monitoring and reporting process.
17	n/a	<b>"Competent Person" means a person that has sufficient training and experience or knowledge to undertake monitoring and / or reporting.</b>	For precision and enforceability, the ExA considers that a definition for 'competent person' needs to be included.
18	<b>Exceedance of air quality Level 2 Threshold or Limit</b> For the purposes of this Part, unless otherwise agreed between the undertaker and the ESG, the exceedance of a Level 2 Threshold or Limit relating to air quality requires—	<del><b>Exceedance of air quality Level 2 Threshold or Limit</b> For the purposes of this Part, unless otherwise agreed between the undertaker and the ESG, the exceedance of a Level 2 Threshold or Limit relating to air quality requires—</del>	The ExA considers that this requirement would duplicate controls within Requirements 21, 22 and 23. The ExA notes that the reason for the 5% criteria given by the Applicant relates to the difference between modelled and monitored conditions. However, the ExA considers that exceedance of the threshold based on monitoring should

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	(a) an exceedance of the annual average pollutant concentrations in Table 4.3 of the green controlled growth framework; and (b) determination by the undertaker that its contribution to the annual average concentration of a pollutant has increased by at least 5 percentage points above the contributions specified in Table 4.2 of the green controlled growth framework relative to the Limit.	<del>(a) an exceedance of the annual average pollutant concentrations in Table 4.3 of the green controlled growth framework; and</del> <del>(b) determination by the undertaker that its contribution to the annual average concentration of a pollutant has increased by at least 5 percentage points above the contributions specified in Table 4.2 of the green controlled growth framework relative to the Limit.</del>	trigger Green Controlled Growth (GCG) and that '5% greater than modelled' would simply raise the threshold before the GCG process would be triggered and therefore should not be applied.
19(2)	Environmental Scrutiny Group (ESG) membership lists membership in 19(2)(a-g)	Amend list of councils to include Dacorum Borough Council.	To ensure that ESG is representative of those host authorities which are likely to experience the greatest effects from the Proposed Development.
19(3)	(3) The individual and officers in sub-paragraph (2) constitute the members of the ESG for the purposes of this Order from— (a) in the case of the independent chairperson and the independent aviation specialist, the date of their appointment in accordance with the terms of reference; and	(3) The individual and officers in sub-paragraph (2) constitute the members of the ESG for the purposes of this Order from— (a) in the case of the independent chairperson <b>and</b> , the independent aviation specialist <b>and the slot allocation expert</b> the date of their appointment in accordance with the terms of reference; <b>and</b> <del>(b) in the case of any other individual or officer, the date approval is provided by the independent chairperson in accordance with the terms of reference, and the membership of the ESG may include such additional</del>	Due to the proposed redrafting of (b) the slot allocation expert has been included in (a) to ensure their inclusion in the requirement.  The proposed redrafting of (b) would ensure that the local authorities are able to act autonomously in making staffing decisions relating to attendance.  Paragraph A2.1.14 of GCG Framework Appendix A [REP7-022] must be amended to reflect this change.

Reference	Text as set out in the draft DCO	ExA's recommended amendment/ insertion	Reasons and notes
	(b) in the case of any other individual or officer, the date approval is provided by the independent chairperson in accordance with the terms of reference, and the membership of the ESG may include such additional individuals or bodies as agreed by the ESG and the undertaker.	<del>individuals or bodies as agreed by the ESG and the undertaker</del>  <b>(b) the Councils who are the members of the ESG to notify the independent chairperson of who their representative is and the appointment will be from that date; and</b>  <b>(c) the membership of the ESG may include such additional individuals or bodies as agreed by the ESG and the undertaker.</b>	
19(4)/ (5)	New sub-paragraph between sub-paragraphs (4) and (5) and then renumber subsequent sub-paragraphs accordingly.	<b>The ESG is quorate for the purposes of decision making where the independent chair, independent aviation specialist, slot allocation expert (or a substitute agreed) and at least 50% of local authority representatives are present.</b>	To ensure that decisions reflect the views of all the local authority members.  Section A2.2 of GCG Framework [REP7-022] Appendix A to be amended to reflect this change.
19(7)	(7) The bodies invited to nominate a technical representative, and the appointment of an independent expert, to each Technical Panel will be determined in accordance with its terms of reference.	(7) The bodies invited to nominate a technical representative, and the appointment of an independent expert, to each Technical Panel will be determined in accordance with its terms of reference. <b>In the case of representatives from the Councils the relevant Council is to identify a suitably qualified person, who is not an elected representative, to represent them on each Technical Panel.</b>	To ensure that the local authorities are able to act autonomously in making staffing decisions relating to attendance.  Paragraph B2.1.19 of GCG Framework Appendix B [REP7-024] must be amended to reflect this change.
19(9)/ (10)	New sub-paragraph between sub-paragraphs (9) and (10) and then renumber	<b>Technical panels are considered to be quorate for the purposes of decision making where the independent technical</b>	To ensure that decisions reflect the views of the local authority members.

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	subsequent sub-paragraphs accordingly.	<b>expert and at least 50% of other technical representatives are present.</b>	Section B2.2 of GCG Framework Appendix B [REP7-024] to be amended to reflect this change.
20(1)(2)	20.—(1) The undertaker must, in accordance with the Monitoring Plans, monitor— (a) noise from the date the notice is served under article 44(1) (interaction with the LLAOL planning permission); and (b) air quality, greenhouse gas emissions and surface access from 1 January following the end of the calendar year in which that notice is served. (2) The undertaker must prepare and submit to the ESG — (a) in respect of noise, the first Monitoring Report no later than 31 July following the end of the calendar year in which the notice is served in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order; and (b) in respect of air quality, greenhouse gas emissions and surface access, the first Monitoring Report no later than 31 July following the end	20.—(1) The undertaker must, in accordance with the Monitoring Plans, monitor— <del>(a) noise, air quality, greenhouse gas emissions and surface access from at least 1 year prior to the date that notice is served under article 44(1) (interaction with the LLAOL planning permission).</del> <b>;</b> <del>and</del> <del>(b) air quality, greenhouse gas emissions and surface access from 1 January following the end of the calendar year in which that notice is served.</del> (2) The undertaker must prepare and submit to the ESG— <del>(a) in respect of noise, the first Monitoring Report no later than 31 July following the end of the calendar year in which the notice is served in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order; and</del> <del>(b) in respect of air quality, greenhouse gas emissions and surface access, the first Monitoring Report no later than 31 July following the end of the first full calendar year after the date that notice is served;</del> <b>(a) in respect of all monitoring themes, 31 July following the end of the first full calendar year of monitoring; and</b>	The ExA considers the proposed changes are necessary to address concerns that the lag time between monitoring reporting could coincide with an increase in flights post serving the notice under Article 44 meaning that the baseline position would not be accurately characterised for monitoring and control processes in the GCG Framework.



Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	of the first full calendar year after the date that notice is served; and (c) all subsequent Monitoring Reports on or before 31 July annually thereafter.	<del>(c)(b)</del> then thereafter a Monitoring Report on or before 31 July is required to be submitted each year.	
20(3)	(3) Monitoring Reports submitted under sub-paragraph (2) must be prepared in accordance with the Monitoring Plans, which may be amended in accordance with sub-paragraph (4).	(3) Monitoring Reports submitted under sub-paragraph (2) must be prepared in accordance with the Monitoring Plans, which may be amended in accordance with sub-paragraph (4). <b>Noise monitoring reports to include details of dispensed movements for the previous 12 months, including reasons for the dispensation and what measures, if appropriate, would be introduced to reduce these incidents in the future.</b>	The ExA considers the additional drafting is necessary to ensure that the grounds for dispensation are being applied appropriately and that quota count budgets are being appropriately managed.
22(6)	(6) A Level 2 Plan may only be refused by the ESG under sub-paragraph (5)(b) where it reasonably concludes that— (a) the proposed actions will not avoid or prevent exceedances of a Limit; or (b) the proposed programme for the implementation of those actions will not avoid or prevent exceedances of a Limit.	<del>(6) A Level 2 Plan may only be refused by the ESG under sub-paragraph (5)(b) where it reasonably concludes that— (a) the proposed actions will not avoid or prevent exceedances of a Limit; or (b) the proposed programme for the implementation of those actions will not avoid or prevent exceedances of a Limit.</del>	The ExA considers this drafting unnecessary and in any event does not consider that the ESG should be restricted in its ability to consider matters.
22(7) and (8)	(7) Where the ESG has refused a Level 2 Plan, the undertaker must no later than	(7) Where the ESG has refused <b>or failed to determine</b> a Level 2 Plan, the undertaker must no later than 42 days starting the day after the decision <b>or the date that the</b>	The ExA notes the Applicant's aspiration for the ESG to make decisions in a timely manner. However, the ExA is concerned that a deemed approval would be

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	42 days starting the day after the decision of the ESG— (a) lodge an appeal under paragraph 38 (appeals to the Secretary of State); or (b) resubmit a revised Mitigation Plan to the ESG. (8) 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 the Level 2 Plan.	<b>decision was due to be made by</b> <del>of</del> the ESG— (a) lodge an appeal under paragraph 38 (appeals to the Secretary of State); or (b) resubmit a revised Mitigation Plan to the ESG. <del>(8) 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 the Level 2 Plan.</del>	inappropriate and could give rise to the approval of details that the ESG may have considered unsatisfactory.
22 (11)	(11) Where a Level 2 Plan approved by the ESG or by the Secretary of State under paragraph 38 (appeals to the Secretary of State) specifies a period that plan will have effect then sub-paragraph (1) does not apply during that period unless—	(11) Where a Level 2 Plan approved by the ESG or by the Secretary of State under paragraph 38 (appeals to the Secretary of State) specifies a period that plan will have effect, then sub-paragraph (1) does not apply during that period unless—	To provide clarity in the drafting.
23(7) and (8)	(7) Where the ESG has refused a Mitigation Plan, the undertaker must no later than 42 days starting the day after the decision of the ESG— (a) lodge an appeal under paragraph 38 (appeals to the Secretary of State); or (b) resubmit a revised Mitigation Plan to the ESG.	<b>(7) Where the ESG has refused or failed to determine</b> a Mitigation Plan, the undertaker must no later than 42 days starting the day after the decision <b>or the date that the decision was due to be made by</b> <del>of</del> the ESG— (a) lodge an appeal under paragraph 38 (appeals to the Secretary of State); or (b) resubmit a revised Mitigation Plan to the ESG.	The ExA notes the Applicant's aspiration for the ESG to make decisions in a timely manner. However, the ExA is concerned that a deemed approval would be inappropriate and could give rise to the approval of details that the ESG may have considered unsatisfactory.

Reference	Text as set out in the draft DCO	ExA's recommended amendment/ insertion	Reasons and notes
	(8) 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 the Mitigation Plan.	<del>(8) 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 the Mitigation Plan.</del>	
23(10)	(a) the undertaker submits a Monitoring Report 2 years from the adoption of a Mitigation Plan under sub-paragraph (5)(b) which shows an exceedance of a Limit;	(a) the undertaker submits a Monitoring Report <del>2 years</del> <b>1 year</b> from the adoption of a Mitigation Plan under sub-paragraph (5)(b) which shows an exceedance of a Limit;	To ensure timely delivery of mitigation, the period for updating the mitigation plan is reduced to 1 year.
23(13)	(13) Where the ESG has failed to make a decision under sub-paragraph (12) within the time period specified in that sub-paragraph, it is deemed to have approved the updated Mitigation Plan.	<del>(13) Where the ESG has failed to make a decision under sub-paragraph (12) within the time period specified in that sub-paragraph, it is deemed to have approved the updated Mitigation Plan.</del>	The ExA notes the Applicant's aspiration for the ESG to make decisions in a timely manner. However, the ExA is concerned that a deemed approval would be inappropriate and could give rise to the approval of details that the ESG may have considered unsatisfactory.
23 (15)	n/a Insert new sub-paragraph between 14 and 15 and renumber following paragraphs	<b>(j) Where a Mitigation Plan has not been effective in removing a breach of a limit within 12 months of its implementation (or within an agreed alternative timetable contained within that plan), the Operator shall be required to pay a financial penalty for each day that the exceedance continues to occur beyond the 12 month period, unless otherwise agreed with the ESG. The scale of financial penalty shall be determined by the Secretary of State</b>	Where a prolonged or repeated exceedance of the consented limits occurs the ExA considers that a financial penalty should be imposed to ensure that the breach is addressed in a timely fashion and that the operator is disincentivised from continuing to breach limits.

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
		<b>and shall be paid into the Community First Fund.</b>	
24(1)	The undertaker must undertake a review of the implementation of this Part, including the review of any Monitoring Plans and arrangements for funding, no later than 3 years from the date the notice is served under article 44(1) (interaction with LLAOL planning permission), and every 5 years following this initial review, and produce and submit to the ESG a report which sets out whether any improvements to the operation of this Part are considered necessary to ensure the efficient and effective operation of authorised development within the Limit.	1 <b>(a)</b> The undertaker must undertake a review of the implementation of this Part, including the review of any Monitoring Plans and arrangements for funding, no later than 3 years from the date the notice is served under article 44(1) (interaction with LLAOL planning permission), and every 5 years following this initial review, and produce and submit to the ESG a report which sets out whether any improvements to the operation of this Part are considered necessary to ensure the efficient and effective operation of authorised development within the Limit. <b>(b)The review must include an analysis of extant policies in relation to the control of greenhouse gas emissions and an outline of appropriate actions to ensure that the development is compliant with these.</b>	To ensure that the GCG Framework remains up to date in respect of rapidly evolving policy on greenhouse gas emissions.
24(6)	(6) Where the ESG has failed to make a decision under sub-paragraph (4) within the time period specified, it is deemed to have approved the application.	<del><b>(6) Where the ESG has failed to make a decision under sub-paragraph (4) within the time period specified, it is deemed to have approved the application.</b></del>	The ExA notes the Applicant's aspiration for the ESG to make decisions in a timely manner. However, the ExA is concerned that a deemed approval would be inappropriate and could give rise to the approval of details that the ESG may have considered unsatisfactory.
26	<b>Air noise management plan</b> 26. From the date that notice is served in accordance with	<b>Night quota period scheduled movements cap</b>	The ExA considers that for the purposes of precision, enforceability and clarity, the

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	<p>article 44(1) (interaction with LLAOL planning permission) of this Order, the airport must be operated in accordance with the air noise management plan.</p>	<p><b>The undertaker must not operate under this Order the airport so that it permits in excess of 9,650 scheduled movements by aircraft in the night quota period per 12 month period.</b></p> <p><b>Air noise management plan</b></p> <p><b>(1)</b> From the date that notice is served in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order, the airport must be operated in accordance with the air noise management plan.</p> <p><b>(2) The undertaker must undertake a review of the air noise management plan no later than 3 years from the date the notice is served under article 44(1) (interaction with LLAOL planning permission).</b></p> <p><b>(3) Thereafter, the air noise management plan shall be reviewed every 5 years, or sooner where a substantial change in operational conditions is anticipated, following this initial review.</b></p> <p><b>(4) the review under sub-paragraphs (2) and (3) shall be submitted and approved in writing to Luton Borough Council in consultation with the specified authorities and shall set out any improvements to the operation of the management plan that are necessary to ensure the efficient and effective operation of authorised development within the Limit.</b></p>	<p>scheduled night quota period movements cap needs to be on the face of the Order.</p> <p>The ExA considers that the Air Noise Management Plan should be retained as it provides important detail regarding the control processes.</p> <p>The effects of noise will not be confined to a single relevant planning authority. In order to streamline the process, the ExA considers that the discharge of this requirement should rest with LBC as the main host authority but in consultation with the other host authorities.</p> <p>Requirements following this in the draft DCO would need to be re-numbered.</p>

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
29(1)	(1) Notice in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order must not be served until a transport related impacts monitoring and mitigation approach for the operation of the airport above the passenger cap permitted by the LLAOL planning permission has been submitted to and approved in writing by the relevant planning authority, following consultation with the relevant highway authority on matters related to its function.	(1) Notice in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order must not be served until a transport related impacts monitoring and mitigation approach for the operation of the airport above the passenger cap permitted by the LLAOL planning permission has been submitted to and approved in writing by <del>the relevant planning authority</del> <b>Luton Borough Council</b> , following consultation with the <b>specified authorities, Buckinghamshire Council and</b> the relevant highway authority <del>on matters related to its function.</del>	<p>The effects of traffic movements will not be confined to a single relevant planning authority. As currently drafted the use of relevant planning authority could result in the transport related impacts monitoring and mitigation approach needing to be submitted to and approved by each of the host authorities. To streamline the process, the ExA considers that the discharge of this requirement should rest with LBC as the main host authority but in consultation with the other host authorities and Buckinghamshire Council.</p> <p>The ExA considers that the use of the phrase 'on matters related to their function' is unnecessary.</p>
29(3)	(3) 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	(3) 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 <del>on matters related to its function.</del>	The ExA considers the drafting to be unnecessary.

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	consultation with the relevant highway authority on matters related to its function.		
30(1)	(1) Notice in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order must not be served until a travel plan for the operation of the airport above the passenger cap permitted by the LLAOL planning permission has been submitted to and approved in writing by the relevant planning authority, following consultation with the relevant highway authority on matters related to its function.	(1) Notice in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order must not be served until a travel plan for the operation of the airport above the passenger cap permitted by the LLAOL planning permission has been submitted to and approved in writing by <del>the relevant planning authority</del> <b>Luton Borough Council,</b> following consultation with the <b>specified authorities, Buckinghamshire Council and</b> the relevant highway authority <del>on matters related to its function.</del>	The effects of traffic movements would not be confined to a single relevant planning authority. As currently drafted the use of relevant planning authority could result in the travel plan needing to be submitted to and approved by each of the host authorities. To streamline the process, the ExA considers that the discharge of this requirement should rest with LBC as the main host authority but in consultation with the other host authorities and Buckinghamshire Council.  The ExA considers that the use of the drafting 'on matters related to their function' is unnecessary.
30(3)	(3) Every five years following the date a travel plan was submitted for approval under sub-paragraph (1), the undertaker must submit an updated travel plan to the relevant planning authority for approval in writing, following consultation with the relevant highway authority on matters related to its function.	(3) Every five years following the date a travel plan was submitted for approval under subparagraph (1), the undertaker must submit an updated travel plan to the relevant planning authority for approval in writing, following consultation with the relevant highway authority <del>on matters related to its function.</del>	The ExA considers the drafting to be unnecessary.
35(1)	(1) Where an application has been made to the discharging authority for any consent,	(1) Where an application has been made to the discharging authority for any consent, agreement or approval referred to in Part 1,	The proposed changes implement the recommendations of the Environment Agency [EV17-002]. These would ensure

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	<p>agreement or approval referred to in Part 1, Part 2 or Part 4 of this Schedule the discharging authority—</p> <p>(a) may consult a discretionary consultee where it appears to the discharging authority, acting reasonably, that such consultation is appropriate having regard to—</p> <p>(i) the nature and spatial extent of the consent, agreement or approval being sought; and</p> <p>(ii) the functions of the discretionary consultee;</p> <p>(b) must give notice to the undertaker of the decision on the application within the specified period which begins on—</p> <p>(i) the day immediately following that on which the application is received by the discharging authority; or</p> <p>(ii) the day immediately following that on which further information has been supplied by the undertaker in response to a request from the discharging authority or a consultee (as the case may</p>	<p>Part 2 or Part 4 of this Schedule the discharging authority—</p> <p>(a) <del>may</del> <b>must</b> consult a discretionary consultee where it appears to the discharging authority, acting reasonably, that such consultation is appropriate having regard to—</p> <p>(i) the nature and spatial extent of the consent, agreement or approval being sought; and</p> <p>(ii) the functions of the discretionary consultee;</p> <p>(b) must give notice to the undertaker of the decision on the application within the specified period which begins on—</p> <p>(i) the day immediately following that on which the application is <del>received</del> <b>deemed valid</b> by the discharging authority; or</p> <p>(ii) the day immediately following that on which <b>valid</b> further information has been supplied by the undertaker in response to a request from the discharging authority or consultee (as the case may be) in accordance with paragraph 36 (further information).</p>	<p>that the appropriate consultees are consulted when discharging requirements and that the specified period cannot begin until the submitted reports are deemed valid.</p>



Reference	Text as set out in the draft DCO	ExA's recommended amendment/ insertion	Reasons and notes
	be) in accordance with paragraph 36 (further information).		
35 (2)/ (3)	New sub-paragraph between sub-paragraphs (2) and (3) and then renumber subsequent sub-paragraphs accordingly.	<b>(3) In determining any application made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 1, Part 2 or Part 4 of this Schedule, the discharging authority may— (a) give or refuse its consent, agreement or approval; or (b) give its consent, agreement or approval either subject to reasonable conditions, or unconditionally; and (c) where consent, agreement or approval is refused or granted subject to conditions the discharging authority must provide its reasons for that decision with the notice of the decision.</b>	To provide clarity as to what a discharging authority can do with an application. There is precedent for such drafting on the made orders for Hornsea 4 Offshore Windfarm and Manston Airport.
35(3)	(3) In the event that the discharging authority does not determine an application within the period set out in sub-paragraph (1), the discharging authority is taken to have granted all parts of the application (without any condition or qualification at the end of that period).	(3) In the event that the discharging authority does not determine an application within the period set out in sub-paragraph (1), <del>the discharging authority is taken to have granted all parts of the application (without any condition or qualification at the end of that period).</del> <b>the undertaker may lodge an appeal for non determination under paragraph 38 (appeals to the Secretary of State) no later than 42 days starting the day after the decision or the date that the decision was due to be made by the discharging authority.</b>	The ExA notes the Applicant's aspiration for the discharging authority to make decisions in a timely manner and are aware of the provisions of articles 27 to 30 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 where article 28 provides similar 'deemed discharge' powers in the event of an authority failing to give notice of their decision when discharging a planning condition.

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
			However, the ExA also notes that Schedule 6 of that Order contains exemptions for EIA development and development orders benefiting from such powers. The ExA therefore considers that the current drafting needs to be replaced with that proposed to reflect this.
35(5)	(5) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of— (a) the application being rejected as invalidly made; or (b) the discharging authority failing to determine the application within the specified period.	(5) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of— (a) <del>the application being rejected as invalidly made</del> <b>the date any application is rejected as being invalid by the discharging authority</b> ; or (b) the discharging authority failing to determine the application within the specified period.	To replicate wording used in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012.
36(3)	(3) If the paragraph concerned specifies that consultation with a consultee is required, or the discharging authority elects to consult a discretionary consultee under paragraph 35(1), then the discharging authority must— (a) issue the application to the consultee within five business days of receipt of the application; (b) allow the consultee the following period of time, as	(3) If the paragraph concerned specifies that consultation with a consultee is required, or the discharging authority elects to consult a discretionary consultee under paragraph 35(1), then the discharging authority must— (a) issue the application to the consultee within five business days of receipt of the application; (b) allow the consultee the following period of time, as relevant, to notify the discharging authority whether, acting reasonably, the consultee requires further information to consider the application— (i) <del>ten</del> <b>fifteen business days from the date on which the views of consultees are</b>	The point from which the timescale for consultees to respond is clarified in response to concerns raised by the Environment Agency [EV17-002].  The ExA considers that the timeframes as amended would allow the consultees an appropriate amount of time to respond.

Reference	Text as set out in the draft DCO	ExA's recommended amendment/insertion	Reasons and notes
	<p>relevant, to notify the discharging authority whether, acting reasonably, the consultee requires further information to consider the application—</p> <p>(i) ten business days, for an application under paragraph 5 of this Schedule for detailed design approval of Works Nos. 3b(01), 3b(02), 3f and 4a; and</p> <p>(ii) five business days, for any other application under Part 1, Part 2 or Part 4 of this Schedule; and</p> <p>(c) notify the undertaker in writing specifying any further information reasonably requested by the discharging authority or any consultee (as the case may be) within—</p> <p>(i) 20 business days of receipt of a an application under paragraph 5 of this Schedule for detailed design approval of Works Nos. 3b(01), 3b(02), 3f and 4a; and</p> <p>(ii) 15 business days of receipt of any other application under Part 1, Part 2 or Part 4 of this Schedule.</p>	<p><b>sought</b>, for an application under paragraph 5 of this Schedule for detailed design approval of Works Nos. 3b(01), 3b(02), 3f and 4a; and</p> <p>(ii) <del>five</del> <b>ten</b> business days <b>from the date on which the views of consultees are sought</b> for any other application under Part 1, Part 2 or Part 4 of this Schedule; and</p> <p>(c) notify the undertaker in writing specifying any further information reasonably requested by the discharging authority or any consultee (as the case may be) within—</p> <p>(i) <del>20</del> <b>twenty five</b> business days of receipt of <del>a</del> an application under paragraph 5 of this Schedule for detailed design approval of Works Nos. 3b(01), 3b(02), 3f and 4a; and</p> <p>(ii) <del>15</del> <b>twenty</b> business days of receipt of any other application under Part 1, Part 2 or Part 4 of this Schedule.</p>	

For the purposes of enabling commentary the proposed new requirements have been sequentially numbered. However, if following any comments made, they are carried through into the recommended DCO that will accompany the ExA's report to the Secretary of State they will be inserted at the relevant points in Schedule 2.

<b>New Requirements</b>		
<b>Number</b>	<b>Proposed Drafting</b>	<b>Reason</b>
1	<p><b>Water consumption</b></p> <p>(1) The undertaker must not increase the demand for water resources from the 2019 consumption baseline, unless otherwise agreed with the utility undertaker. '2019 consumption baseline' means 4.2 litres per second in respect of water demand for the airport terminals and 3.3 litres per second in respect of water demand for the airport non-terminals, as defined in the Water Cycle Strategy.</p> <p>(2) A monitoring report detailing water consumption in respect of water demand for the airport terminals and non-terminals must be submitted annually from the date of commencement to the relevant planning authority in consultation with Affinity Water.</p>	<p>To manage water consumption for the Proposed Development in the absence of protective provisions and/ or a side agreement for Affinity Water.</p>
2	<p><b>Phases of Authorised Development</b></p> <p>(1) The authorised development must not commence until a written scheme setting out the phases of construction for the authorised project has been submitted to and approved by Luton Borough Council in consultation with the specified authorities, Buckinghamshire Council and the relevant highway authority.</p> <p>(2) The scheme submitted under sub-paragraph (1) must be substantially in accordance with the phases on the scheme layout plans and shall be accompanied by a layout plan detailing the location of the work numbers specified in Schedule 1.</p> <p>(3) The undertaker must undertake a review of the written scheme and layout plan no later than three years, or sooner where a substantial change to the stages of construction is anticipated, from the date the development is commenced and</p>	<p>At various points throughout the Examination the ExA has asked whether the draft DCO should include a phasing requirement. The ExA notes the Applicant's response that it considered that such a requirement would not be needed and the need for the Applicant to have flexibility. The ExA also notes the response from various Interested Parties on this matter. Having considered the matter further the ExA considers that to ensure that the necessary mitigation would be in place to ensure compliance with the ES a phasing plan setting out the order in which works would be carried out is necessary and relevant. The ExA accepts that, with a project of this size and length, there needs to be an element of flexibility and as a result has included drafting to enable the scheme to be reviewed and amended at appropriate points within the project timetable.</p>

New Requirements		
Number	Proposed Drafting	Reason
	<p>every three years thereafter until the authorised development is completed.</p> <p>(4) The review under sub-paragraphs (3) must be submitted to and approved in writing by Luton Borough Council, following consultation with the specified authorities, Buckinghamshire Council and the relevant highway authority.</p> <p>(5) The authorised development must be carried out in accordance with the details approved unless otherwise agreed by the relevant planning authority under sub-paragraph (1).</p>	
3	<p><b>Lighting plan</b></p> <p>(1) No part of the authorised development may commence until details of site lighting to be installed in connection with the construction of that part, including detailed measures to prevent light spillage, have been submitted to and approved by Luton Borough Council in consultation with the specified authorities. Thereafter, the site lighting must be installed in accordance with the approved details and retained for the duration of the construction period in accordance with the measures stated in section 5.5 of the Code of Construction Practice.</p> <p>(2) Any means of construction lighting approved under sub-paragraph (1) must be operated in accordance with the scheme approved under sub-paragraph (1) and removed on completion of the relevant stage.</p> <p>(3) No part of the authorised development may come into operation until a scheme of the proposed operational lighting to be provided to any building, structure or other works for that part of the authorised development, accompanied by detailed measures to prevent light spillage, has been submitted to and</p>	<p>The ExA notes the comments from the Applicant [REP5-052, page 24]. Given the number of concerns raised in the representations regarding light pollution from buildings within the airport, and the comments from Central Bedfordshire Council in its Local Impact Report [REP1A-002, paragraph 5.7.22], the ExA considers it necessary that a requirement for lighting details is specifically included for both the construction and operational periods as this is not explicitly referenced in Requirement 5.</p> <p>A separate requirement is recommended to allow other design elements of the Proposed Development to be discharged under Requirement 5 and a lighting scheme to respond to any approved site layout of that part or external appearance of any building or structure.</p>

New Requirements																							
Number	Proposed Drafting	Reason																					
	<p>approved in writing by Luton Borough Council in consultation with the specified authorities.</p> <p>(4) The scheme submitted under sub-paragraph (3) must be in accordance with the Exterior Lighting Strategy contained in part B of the Light Obtrusion Assessment and incorporate the principles and mitigation measures contained in the Design Principles and part A of the Light Obtrusion Assessment.</p> <p>(5) The operational lighting must be installed and thereafter operated in accordance with the scheme approved under sub-paragraph (3).</p>																						
4	<p><b>Noise contour limits and quota count point limits</b></p> <p>The area enclosed by the 54dB LAeq(16hr) (0700-2300 hrs) and the 48dB LAeq(8hr) (2300- 0700 hrs) contours shall not exceed the limit values for the time periods set out in Table x. The Applicant shall apply the contour limit values set out for the time periods indicated. The contours shall be calculated using the Federal Aviation Authority (FAA) Aviation Environmental Design Tool (AEDT) noise model version 3e prepared to support the DCO submission or periodic updates to that model, subject to written agreement from the ESG.</p> <p>Table x: DCO noise contour thresholds and limits</p> <table border="1"> <thead> <tr> <th>Limit</th> <th>Up to 2028</th> <th>2029 – 2033</th> <th>2034 – 2038</th> <th>2039 – 2043*</th> <th>2044 onwards (in 5 year cycles)*</th> </tr> </thead> <tbody> <tr> <td>Average summer day-time noise levels, as measured by size (km2) of 54 dB LAeq,16hr noise contour</td> <td>Limit 30.6</td> <td>28.8</td> <td>28.8</td> <td>32.6</td> <td>32.6</td> </tr> <tr> <td>Average summer night-time noise levels, as measured by size (km2) of 48 dB LAeq,8hr noise contour</td> <td>Limit 42.2</td> <td>37.8</td> <td>37.8</td> <td>43.2</td> <td>43.2</td> </tr> </tbody> </table> <p>The contour area limit values shall be converted to day and night quota count budgets, supported by threshold value day and</p>	Limit	Up to 2028	2029 – 2033	2034 – 2038	2039 – 2043*	2044 onwards (in 5 year cycles)*	Average summer day-time noise levels, as measured by size (km2) of 54 dB LAeq,16hr noise contour	Limit 30.6	28.8	28.8	32.6	32.6	Average summer night-time noise levels, as measured by size (km2) of 48 dB LAeq,8hr noise contour	Limit 42.2	37.8	37.8	43.2	43.2	<p>The ExA considers that for the purposes of precision, enforceability and clarity, noise contour limits need to be on the face of the Order.</p> <p>The purpose is to safeguard the living conditions of residents and the character of the surrounding area and to provide certainty in respect of the noise controls for the proposed development, ensuring that changes to thresholds and limits are subject to appropriate scrutiny by the Secretary of State.</p> <p>The limits and thresholds are derived from the core growth predictions in Tables 7.40, 7.43, 7.46, 7.49, 7.52 and 7.55 in ES Appendix 16.1 Noise and vibration information [REP7-013] and appear to differ slightly from those presented in the Applicant’s response to the ExA’s further written question GCG2.4 in the period up to 2028 [REP7-054]. The ExA was unable to establish precisely how the 2029-2033 contour was set, therefore the 2034-2038 period value was used and may be required to increase. Use of the core growth scenario limits is intended to avoid additional effects above SOAEL for the local community that are otherwise predicted to arise.</p>			
Limit	Up to 2028	2029 – 2033	2034 – 2038	2039 – 2043*	2044 onwards (in 5 year cycles)*																		
Average summer day-time noise levels, as measured by size (km2) of 54 dB LAeq,16hr noise contour	Limit 30.6	28.8	28.8	32.6	32.6																		
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New Requirements		
Number	Proposed Drafting	Reason
	<p>night quota count budgets as set out in the GCG framework, using a regression analysis approach to be agreed with Luton Borough Council in consultation with the councils listed in requirement 19(2).</p> <p>The Applicant may make a written request to the Secretary of State to change the contour limits, following consultation on such changes with Luton Borough Council and where appointed, the ESG. The Secretary of State may approve changes to contour limits where the Applicant has demonstrated that such changes would not result in materially worse noise effects than those assessed in the Environmental Statement.</p>	<p>The GCG framework should be updated to reflect that Table x is now within the DCO. The approach to calculating quota count budgets presented in the Applicant's Response to Issue Specific Hearing 9 Actions 8, 19 and 20: Quota Count Noise Controls [REP7-077] should also be incorporated into the GCG framework and used to prepare core growth quota count budgets.</p>
5	<p><b>Restrictions on aircraft quota count</b></p> <p>(1) Any aircraft which has a quota count of 2, 4, 8 or 16 may not take-off or land during the period 23:00-07:00, unless the circumstances in (a) to (g) apply:</p> <p>(a) an aircraft taking off or landing in order to avoid serious congestion at the airport or serious hardship or suffering to passengers or animals;</p> <p>(b) an aircraft delayed in taking off or landing as a result of widespread and prolonged disruption of air traffic;</p> <p>(c) an aircraft taking off or landing in an emergency consisting of an immediate danger to life or health, whether human or animal;</p> <p>(d) take-off or landing of any light propeller-driven aircraft with a maximum certificated take-off weight not exceeding 8,618kg, and which is being utilised to undertake essential airport safety checks;</p> <p>(e) flights operated by relief organisations for humanitarian reasons;</p> <p>(f) flights operated by the armed forces for military purposes; or</p> <p>(g) a particular occasion or series of occasions which are to be disregarded pursuant to a notice published by the Secretary of</p>	<p>Whilst the ExA notes that the quota count control is contained within the Air Noise Management Plan, the ExA consider that for the purposes of precision, enforceability and clarity this needs to be on the face of the Order.</p>

New Requirements		
Number	Proposed Drafting	Reason
	<p>State under section 78(4) or 78(5)(f) of the Civil Aviation Act 1982 or set out in guidance published by the Secretary of State in connection with those provisions.</p> <p>(2) Unless the circumstances in paragraph (1) apply, an aircraft may not take-off or be scheduled to land during the night period where:</p> <p>(a) the operator of that aircraft has not provided (prior to its take-off or scheduled landing time as appropriate) sufficient information to enable the airport operator to verify its noise classification and thereby its quota count; or</p> <p>(b) the operator claims that the aircraft is an exempt aircraft but the aircraft is not indicated to be such within Part 2 of the Schedule to the UK AIP supplement.</p> <p>(3) In sub-paragraph 1, the definitions of ‘serious congestion’ and ‘widespread and prolonged disruption of air traffic’ are the same as the definitions provided in Annex F: Guidelines on Dispensations of Department for Transport’s Night Flight Restrictions, March 2023.</p>	
6	<p><b>Annual air traffic movement (ATM) cap for the authorised development</b></p> <p>Subject to, and without prejudice to, the provisions of this Order, the undertaker may operate the airport under this Order so that it permits up to 209,410 commercial and non-commercial ATM annually. Of this limit, no more than 13,000 ATM annually shall be permitted in the shoulder periods 23:00-23:30 and 06:00-07:00.</p>	<p>The ExA considers that an ATM cap is required to provide certainty regarding the maximum number of flights that can operate. This is intended to address resident’s concerns that experience of aviation noise impact relates to number of overpasses rather than average noise levels, which inform the main contour-based controls.</p> <p>The Applicant has suggested an ATM cap of not less than 225,000 movements [REP7-077], however the ExA has adopted 209,410 as suggested by a number of local authorities (Central Bedfordshire Council, Joint Authorities and LBC eg [REP7-084], [REP7-087] and [REP7-090]) on the basis that</p>



New Requirements		
Number	Proposed Drafting	Reason
		<p>this number of movements has informed the Applicant's assessment of effects in the ES.</p> <p>In the absence of any alternative proposals, the Applicant's suggested annual shoulder period ATM cap [REP7-077] has been included to provide certainty regarding number of movements during this period.</p>
7	<p><b>Noise insulation policy</b> No part of the authorised development may commence until a Compensation Policies, Measures and Community First document, substantially in accordance with the draft document, has been submitted to and approved in writing by Luton Borough Council in consultation with the Council's listed in paragraph 19(2). The authorised development shall operate in accordance with the approved document, unless otherwise approved in writing.</p>	<p>In the absence of a secured commitment in a section (s)106 agreement or unilateral undertaking this requirement would secure the noise insulation mitigation/ compensation approach proposed by the Applicant.</p>
8	<p><b>Noise insulation plan and programme</b> (1) No increase in passenger capacity may occur until a detailed plan and programme for the delivery of noise insulation has been submitted to and approved in writing by the relevant planning authority.</p> <p>(2) The programme will set out the total number of eligible properties remaining to be insulated and the numbers of eligible properties that it is intended to insulate in the following year and each subsequent calendar year.</p> <p>(3) Two months before the end of the calendar year, an update report will be submitted to and approved in writing by the relevant planning authority. The update report will include a summary of the completion and survey rates, explaining the cause and remedy for any delays and setting out the programme for the next year.</p>	<p>The ExA considers that for the purposes of precision, enforceability and clarity a plan to deliver noise compensation needs to be on the face of the Order.</p> <p>To ensure that the timely delivery of noise insulation is consistent with the approach set out in the Applicant's submission Noise Insulation Delivery Programme [REP4-079] and response to the ExA's further written question NO.2.15 [REP7-056] the ExA considers that a mechanism to ensure appropriate scrutiny of the delivery programme is required.</p>

New Requirements		
Number	Proposed Drafting	Reason
	<p>(4) The noise insulation programme will be carried out in accordance with the plans approved under sub-paragraphs (2) and (3) and will continue until such time that the relevant planning authority has confirmed in writing that it is satisfied that all eligible properties have been insulated to a satisfactory level.</p>	
9	<p><b>Noise violation limits</b></p> <p>(1) Noise levels of departing aircraft will be measured at the airport's three permanent noise monitors at 6.5km from the start of roll on the runway. Any aircraft departure exceeding the Noise Violation Limits at these monitors will be subject to a fine as set out in the air noise management plan.</p> <p>(2) The Departure Noise Violation Limits until 1 January 2028 will be:</p> <p>(i) 80dB<sub>L<sub>Amax</sub></sub> during the daytime (07:00 – 23:00); and</p> <p>(ii) 79dB<sub>L<sub>Amax</sub></sub> during the night-time (23:00 – 07:00).</p> <p>(3) On the 1 January 2028 the daytime and night-time Departure Noise Violation Limits will be reduced to 77dB<sub>L<sub>Amax</sub></sub> and 77dB<sub>L<sub>Amax</sub></sub> respectively.</p> <p>(4) Noise violations shall be managed in accordance with the procedures set out in the Air Noise Management Plan.</p> <p>(5) The operator will produce a report to ESG on departure noise violation limits every 5 years. Where the report identifies that a reduction is possible, the operator shall implement the revised violation limits and operate the airport accordingly.</p>	<p>The ExA considers that for the purposes of precision, enforceability and clarity noise violation limits need to be on the face of the Order.</p> <p>To incentivise use of the quietest aircraft and to minimise effects on the local population the requirement includes a mechanism to ensure that the potential to reduce limits is reviewed after 2028.</p>
10	<p><b>Track violation</b></p> <p>A track keeping system shall be maintained by the airport. Track violation and track violation penalties shall be managed in</p>	<p>The ExA considers that for the purposes of precision, enforceability and clarity track violations needs to be on the face of the Order.</p>

New Requirements		
Number	Proposed Drafting	Reason
	accordance with the procedures set out in the air noise management plan.	
11	<p><b>Air Quality Monitoring Plan</b> No increase in passenger capacity may occur until the Green Controlled Growth Appendix D Air Quality Monitoring Plan setting out the location, monitoring standards, calibration and reporting process for monitoring and details of the ANPR or equivalent means of evaluating traffic movements to assess proportional contributions has been submitted to and approved in writing by Luton Borough Council in consultation with the councils listed in requirement 19(2).</p>	In light of the ongoing discussions regarding air quality monitoring standards, this requirement is considered to be necessary to ensure that appropriate standards are achieved through consultation with the relevant local authorities. It is noted that Appendix D of the GCG framework [REP7-028] is intended to be the monitoring plan but does not currently have the required detail or a mechanism for it to be agreed/ approved.
12	<p><b>Employment and training strategy</b> (1) No part of the authorised development may commence until an employment and training strategy, which is in accordance with the employment and training strategy has been submitted to and approved in writing by Luton Borough Council in consultation with the specified authorities and Buckinghamshire Council. (2) The employment and training strategy must be implemented as approved.</p>	The ExA notes that currently the employment and training strategy would be secured through the proposed s106 agreement. However, the ExA considers that it can be secured on the face of the order through an appropriately worded requirement.

Schedule 7						
Text as set out in the draft DCO		Proposed Change			Reason	
2-144	Offsite highway works, including works at Eaton Green Road and Lalleford Road, associated laydown areas, access, working space to support construction	Work No 6e(d)	<b>2-144</b>	<b>Offsite highway works, including works at Eaton Green Road and Lalleford Road, associated laydown areas, access, working space to support construction</b>	<b>Work No 6e(d)</b>	Due to the significant number of relevant representations expressing concerns regarding the extent of the proposed works to Eaton Green Road, Wigmore Lane and Crawley Green Road and the lack of sufficient justification for these works the ExA considers they

Schedule 7						
Text as set out in the draft DCO		Proposed Change			Reason	
3-27, 3-28, 3-29, 3-30, 3-36, 3-37, 3-38, 3-39,	Offsite highway works, including works at Wigmore Lane and Crawley Green Road, associated laydown areas, access, working space to support construction	Work No. 6e(e)	<del>3-27, 3-28, 3-29, 3-30, 3-36, 3-37, 3-38, 3-39,</del>	<b>Offsite highway works, including works at Wigmore Lane and Crawley Green Road, associated laydown areas, access, working space to support construction</b>	<del>Work No. 6e(e)</del>	are unnecessary and therefore should be deleted from the draft DCO.
1-01, 1-02, 1-03, 1-04, 1-05, 1-06, 1-07, 1-08, 1-09, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-17, 1-20, 1-21, 1-26, 1-28, 1-29, 1-35, 3-05, 3-06, 3-11, 3-14, 3-15, 3-17, 3-18, 3-22, 3-23, 3-24, 3-25, 3-	Offsite highway works, including works at Eaton Green Road and Wigmore Lane, associated laydown areas, access, working space to support construction	Work No. 6e(f)	<del>1-01, 1-02, 1-03, 1-04, 1-05, 1-06, 1-07, 1-08, 1-09, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-17, 1-20, 1-21, 1-26, 1-28, 1-29, 1-35, 3-05, 3-06, 3-11, 3-14, 3-15, 3-17, 3-18, 3-22, 3-23, 3-24, 3-25, 3-26, 3-27,</del>	<b>Offsite highway works, including works at Eaton Green Road and Wigmore Lane, associated laydown areas, access, working space to support construction</b>	<del>Work No. 6e(f)</del>	

Schedule 7						
Text as set out in the draft DCO			Proposed Change			Reason
26, 3-27, 3-28, 3-29			<del>3-28, 3-29</del>			
3-31, 3-33, 3-34, 3-35	Offsite highway works, including works at Crawley Green Road/Lalleford Road, associated laydown areas, access, working space to support construction	Work No. 6e(j)	<del>3-31, 3-33, 3-34, 3-35</del>	<del>Offsite highway works, including works at Crawley Green Road/Lalleford Road, associated laydown areas, access, working space to support construction</del>	<del>Work No. 6e(j)</del>	

Schedule 9	
Additional document	Reason
GCG framework explanatory note [REP7-018]	Explanatory note to be added to the list of certified documents to ensure that there is a detailed explanation of the GCG process.
Water Cycle Strategy [REP4-033]	Add to certified documents to support the new water resource requirement.

New schedules	
Arbitration Rules	The ExA notes the Applicant's response to this request [REP4-057]. However, it considers that a schedule setting out further details on how arbitration would work including providing a framework and appropriate timeframe to enable a fair, impartial, final and binding resolution where a substantive difference between the parties arises would be appropriate. See Appendix A to this document for suggested drafting.
Design review	The ExA considers that the detail contained within Schedule 11 of the draft s106 agreement [REP7-074] could be contained within a Schedule and used to inform requirement 5.

**Drafting of proposed new schedule to deal with arbitration**

**Primary objective**

1.—(1) The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 52 of the Order.

(2) The parties shall first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the parties. Any dispute which is not resolved amicably by the senior management of the parties within twenty (20) working days of the dispute arising, or such longer period as agreed in writing by the parties, shall be subject to arbitration in accordance with the terms of this Schedule.

(3) The Arbitration will be deemed to have commenced when a party (“the Claimant”) serves a written notice of arbitration on the other party (“the Respondent”).

**Time periods**

2.—(1) All time periods in these Arbitration Rules are measured in working days and this will exclude weekends, bank holidays and public holidays.

(2) Time periods are calculated from the day after the arbitrator is appointed which is either—

- (a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the Secretary of State.

**Timetable**

3.—(1) The timetable for the arbitration is set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 15 days of the arbitrator being appointed, the Claimant must provide both the Respondent and the arbitrator with—

- (a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant’s contentions as to those issues, and the remedy it is seeking; and
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 15 days of receipt of the Claimant's statements under sub-paragraph (2) by the arbitrator and Respondent, the Respondent must provide the Claimant and the arbitrator with—

- (a) a written Statement of Defence responding to the Claimant's Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant's claim, its acceptance of any element(s) of the Claimant's claim, its contentions as to those elements of the Claimant's claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and
- (c) any objections it wishes to make to the Claimant's statements, comments on the Claimant's expert report(s) (if submitted by the Claimant) and explanations for the objections.

(4) Within 5 days of the Respondent serving its statements sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the arbitrator with—

- (a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
- (c) any expert report in response to the Respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent; and
- (e) its written submissions in response to the legal and factual issues involved.

## **Procedure**

4.—(1) The arbitrator must make an award on the substantive difference(s) based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(2) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(3) Within 5 days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(4) Within 10 days of the arbitrator advising the parties that they will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which they consider is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(5) A decision must be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any expert(s) attending the hearing may be asked questions by the arbitrator.

(6) There is no process of examination and cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the arbitrator's questions. Prior to the hearing the procedure for the expert(s) is—

(a) at least 20 days before a hearing, the arbitrator must provide a list of issues to be addressed by the expert(s);

(b) if more than one expert is called, they are to jointly confer and produce a joint report or reports within 10 days of the issues being provided; and

(c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least 5 days before the hearing.

(7) Within 10 days of a hearing or a decision by the arbitrator that no hearing is to be held the Parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(8) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which they are appointed, unless both parties otherwise agree to an extension to the date for the award.

(9) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before them attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(10) The arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given will be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

### **Arbitrator's powers**



5.—(1) The arbitrator has all the powers of the Arbitration Act 1996(a), including the nonmandatory sections, save where modified by these Arbitration Rules.

(2) There will be no discovery or disclosure, except that the arbitrator has the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders are to be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales and/or procedure—

(a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;

(b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it is to be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

### **Costs**

6.—(1) The costs of the Arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the Arbitration.

(2) Subject to sub-paragraph (3), the arbitrator must award recoverable costs on the general principle that each party should bear its own costs.

(3) The arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as set out in the Planning Practice Guidance or such other guidance as may replace it.

### **Confidentiality**

7.—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation shall be open to and accessible by the public.

(2) The arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) Nothing in this paragraph shall prevent any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.