

**From:** HENDERSON Tom  
**Sent:** 22 January 2024 12:28  
**To:** Evans, Sian  
**Cc:** Burnie, Rammiel; Luton Airport; TEARLE Lee  
**Subject:** RE: Response to ExA's DCO commentary [BDB-BDB1.FID9758821]

Thanks, Sian. Just to add that following ongoing work to respond to the ExA's comments, the list of matters we would like to discuss in a "meeting" (hearing) has been refined as highlighted below. Grateful if you could pass this on to the ExA. We look forward to hearing from you.

- Schedule 1:
  - Proposal to remove Offsite Highway Works Work No. 6e which the Applicant considers essential mitigation, and the loss of which would be a material change to the application
- Schedule 2, Part 3 – proposed amendments to GCG requirements which affect:
  - the process associated with and air quality limit / threshold breach (paragraph 18)
  - the timing / efficacy of the ESG process (paragraphs 19(2), 19(4) and (5) on ESG quorum, and paragraphs 22(7) and (8) on decision-making)
  - commencement of GCG monitoring (paragraph 20)
  - financial penalties (paragraph 23(15))
- Proposed new requirements (ExA's numbering referenced below):
  - 1 – water supply restriction
  - 2 – phasing
  - 4 – revised noise contours / quota count limits
  - 5, 9, 10 – cargo implications of proposed QC restrictions proposed inclusion of ANMP provisions on the face of the DCO
  - 6 – implications of shoulder period restrictions

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**Tom Henderson Partner**  
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**From:** Evans, Sian <[SIAN.EVANS@planninginspectorate.gov.uk](mailto:SIAN.EVANS@planninginspectorate.gov.uk)>  
**Sent:** Friday, January 19, 2024 2:04 PM  
**To:** HENDERSON Tom  
**Cc:** Burnie, Rammiel <[Rammiel.Burnie@planninginspectorate.gov.uk](mailto:Rammiel.Burnie@planninginspectorate.gov.uk)>; Luton Airport <[Lutonairport@planninginspectorate.gov.uk](mailto:Lutonairport@planninginspectorate.gov.uk)>; TEARLE Lee  
**Subject:** RE: Response to ExA's DCO commentary [BDB-BDB1.FID9758821]

Dear Tom

Thank you for your email. It has been passed to the ExA and we hope to respond early next week.

Kind regards

Sian



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**From:** HENDERSON Tom

**Sent:** 18 January 2024 17:27

**To:** Evans, Sian <[SIAN.EVANS@planninginspectorate.gov.uk](mailto:SIAN.EVANS@planninginspectorate.gov.uk)>

**Cc:** Burnie, Rammiel <[Rammiel.Burnie@planninginspectorate.gov.uk](mailto:Rammiel.Burnie@planninginspectorate.gov.uk)>; Luton Airport <[Lutonairport@planninginspectorate.gov.uk](mailto:Lutonairport@planninginspectorate.gov.uk)>; TEARLE Lee

**Subject:** Response to ExA's DCO commentary [BDB-BDB1.FID9758821]

Dear Sian

I am writing in connection with the ExA's recommended amendments to the Applicant's draft DCO. The Applicant will of course be providing, at Deadline 8, a substantive written response. I can confirm that the Applicant accepts the principle of many of the changes, although in some of those cases it will respond with alternative forms of drafting in line with those principles. The Applicant will submit an updated DCO at Deadline 8, although it is possible that some of the detailed drafting will require more time to finalise and will come forward at deadline 9. Equally it is possible that some of the more technically complex recommendations may require an initial response at Deadline 8, with a follow-up at Deadline 9.

There are, however, a number of recommended amendments which the Applicant is not able to accept, as it considers they would disproportionately impact on the delivery of expansion for which consent is sought. The specific recommendations in this category are as follows:

- Schedule 1:
  - Proposal to remove Offsite Highway Works Work No. 6e which the Applicant considers essential mitigation, and the loss of which would be a material change to the application
- Schedule 2, Part 3 – proposed amendments to GCG requirements which affect:
  - the process associated with and air quality limit / threshold breach (paragraph 18)
  - the timing / efficacy of the ESG process (paragraphs 19(2), 19(4) and (5) on ESG quorum, and paragraphs 22(7) and (8) on decision-making)
  - commencement of GCG monitoring (paragraph 20)
  - financial penalties (paragraph 23(15))
- Proposed new requirements (ExA's numbering referenced below):
  - 1 – water supply restriction
  - 4 – revised noise contours / quota count limits
  - 5 – cargo implications of proposed QC restrictions
  - 6 – implications of shoulder period restrictions

The Applicant will submit its reasons for resisting these recommendations at deadlines 8. However, given that the nature of these matters extends beyond DCO drafting points into issues of project deliverability, the Applicant is concerned to ensure that it has had the opportunity to fully state its case, including engaging with the ExA to explore and clarify respective positions. Given the limited amount of time left in the examination for any exchanges to take place in writing, the Applicant would like to propose that the ExA convenes a virtual "meeting", which would focus on a discussion of the above-mentioned bullet points.

The Applicant understands that such a “meeting” can be called under regulation 6(3) of the Infrastructure Planning (Examination Procedure) Rules 2010, which is therefore not subject to the minimum notification periods for an ISH, and could instead be scheduled by letter from the ExA. The Applicant understands that this meeting would be called at short notice, but considers that there is still sufficient time for it to happen in accordance with regulation 6(3). The Applicant would propose that it takes place from 9:30am on Thursday 1 February – this would be clear of Deadline 9, provide sufficient notice to IPs, and give the ExA and IPs time to digest the Applicant’s Deadline 8 submissions. It would allow parties to submit any post “meeting” submissions by Deadline 10 (Monday 5 February). The ExA could add a new Deadline 11 on Friday 9 February for IPs to submit comments on post-meeting submissions received at Deadline 10.

We are putting this request to you by email at this stage, on the basis that we anticipate you will want to discuss it with the ExA, and to allow an initial exchange of views between us. We would be happy to schedule a discussion with you, should that assist. We recognise it may be appropriate for us to convert the above into a letter to the ExA, pending your initial response.

Thanks and regards,

Tom



**Tom Henderson** Partner

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