Luton Rising
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January 2024

London Luton Airport Expansion

Planning Inspectorate Scheme Ref: TR020001

Volume 8 Additional Submissions (Examination)

8.173 Applicant's Response to the Examining Authority's Commentary on the Draft DCO

Infrastructure Planning (Examination Procedure) Rules 2010

Application Document Ref: TR020001/APP/8.173

The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

London Luton Airport Expansion Development Consent Order 202x

8.173 APPLICANT'S RESPONSE TO EXAMINING AUTHORITY'S COMMENTARY ON THE DRAFT DCO

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1 INTRODUCTION

1.1 Purpose of this document

1.1.1 This document has been prepared by Luton Rising (a trading name of London Luton Airport Limited) ('the Applicant') for submission to the Examining Authority (ExA). It provides the Applicant's response to the ExA's Commentary on the Draft Development Consent Order (DCO) **[PD-018]**.

2 APPLICANT'S RESPONSE TO EXA'S COMMENTARY ON THE DRAFT DCO

Table 2-1: Applicant's response to ExA's commentary on the Draft DCO – existing provisions

Ref	ExA's recommended amendment/insertion	Reasons and notes	The Applicant's response
INTRODUCTION			
	[The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117,120**,** ~~**and**~~ 122**, 123 and 147** 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.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.
ARTICLES			
2	"relevant highway authority" means, in any given provision of this Order, the highway authority for the highway to which the provision relates**, including in relation to the strategic road network National Highways**;	To ensure that National Highways are consulted on matters that affect the strategic road network.	The Applicant confirms that it has made an amendment to the definition of "relevant highway authority" in Article 2 to provide greater clarity in relation to National Highways being consulted on matters affecting roads in respect of which it is the highway authority. This amendment is shown in the draft DCO submitted for Deadline 8. It differs from the ExA's proposal but achieves the same substantive effect. The Applicant's revised form of drafting provides greater clarity more

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			generally in relation to how the term "relevant highway authority" is used throughout the DCO.
8	**Consent to transfer benefit of Order** (4)(j) in relation to a transfer or a grant of any works within a highway, a highway authority **(including National Highways)** responsible for the highways within the Order land.	The ExA considers that the additional text makes it clearer that highway authority includes National Highways.	The definition of "relevant highway authority" has been amended to clarify that National Highways is a highway authority. The Applicant does not, therefore, agree that a change to article 8 is required. The DCO will be a statutory instrument, and it is conventional drafting practice to utilise definitions contained in an interpretative provision, without then repeating them in later provisions.
11	**Power to alter layout, etc., of streets** (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 **of such kerb or alter the level and** increase the width of such ~~**kerb**~~, 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 o footpath can be changed and therefore should be omitted from the list.	The Applicant notes the ExA's response but would make the point that there is no 'set dimension' for a kerb stone as the width, height and length of such a stone varies depending upon the intended use of the kerb stone. There is, therefore, scope for the width and height of a kerb stone to be altered or changed and so the Applicant's position remains that it is appropriate to refer to 'kerb' in the drafting. Indeed, such a reference is commonly applied and is well precedented.
14	**Permanent** ~~stopping up~~ **closure of public rights of way**	The ExA notes the Applicant's response [REP3-073] to the previous request to amend this wording. However, whilst there	The Applicant confirms that a highway can be "stopped up" under e.g. sections 116 and 118 of the Highways Act 1980. Indeed Part VIII of the Act is titled "*Stopping Up and Diversion of Highways and Stopping Up of Means of Access to Highways*".

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		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.	Hence "stopping up" is the appropriate and correct term of art in this context. As the ExA has noted, the term is well precedented reflecting the Secretary of State's endorsement for this term being employed in secondary legislation. Accordingly, the Applicant does not agree with this amendment.
21	**Authority to survey and investigate the land** (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless ~~**at least**~~ **no less than** 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.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.
22	**Felling or lopping of trees and removal of hedgerows** 22.—(1) Subject to paragraph**s 8 and** 9 of Schedule 2 to this Order, the undertaker may fell or lop any tree ~~**or ,**~~shrub **or hedgerow** 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 **or hedgerow**—	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	The Applicant confirms that these amendments have been made in the draft DCO submitted for Deadline 8. The Applicant has made some minor consequential amendments to the article heading and paragraph (1), to align with the ExA's recommended amendments.

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	(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. **(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.**	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 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.	

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	(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. **(~~2~~4)** In carrying out any activity authorised by paragraph**s** (1)**, (2) and (3)**, the undertaker must do no unnecessary damage to any tree**, ~~or~~** shrub **or hedgerow** and must pay compensation to any person for any loss or damage arising from such activity. (**~~3~~5**) Any dispute as to a person's entitlement to compensation		

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	under paragraph (~~2~~**4**), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act. **~~(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.~~** (~~**5**~~**6**) In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997(**a**) and includes important hedgerows.		
35 (1)	**Special category land** (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	The ExA and a number of Interested 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.	The Applicant understands the rationale for this change but considers that it is not appropriate or suitable for inclusion as a DCO provision, and that the substantive outcome it seeks to achieve is already provided for. The Applicant observes that the "no less advantageous test" is engaged, as a matter of law under section 131 of the Planning Act 2008, at the point the Secretary of State takes a decision on the DCO application. This mirrors the long-established position under section 19 of the Acquisition of Land Act 1981.

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	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. **The timetable must include a clear statement of when the replacement land will have been laid out to the extent that it is no less advantageous to the public**.		The DCO application articulates how the ExA and Secretary of State can be satisfied this test is met – see, in particular, section 12 of the **Statement of Reasons [AS-071]**, Appendix C of the **Planning Statement [APP-197]**, **Chapter 13 of the Environmental Statement [REP7-009]**, the **Strategic Landscape Masterplan [APP-172]** and the **Outline Biodiversity Management Plan [AS-029]**. The latter two documents are secured by paragraphs 8 and 9 of Schedule 2 to the **Draft DCO [REP7-003]** which require local planning authority (LPA) approval of the detailed schemes. The draft DCO also requires LPA approval of the detailed design of works under Schedule 2, paragraph 5, which in turn secures the **Design Principles [REP7-034]**. The Design Principles in turn contain a raft of biodiversity and landscape principles which must be adhered to. Finally, the Draft DCO also requires LPA approval of the replacement land scheme and its implementation timetable under article 35. The Applicant's response to **ExA Q2 CA.2.1 [REP7-051]** recognised that some elements of woodland vegetation will take time to mature, although measures are available to accelerate that, and some habitats (e.g. meadows) will establish quickly. The Applicant would emphasise that other advantages of the replacement land offset that period of vegetation maturity – in particular a

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			substantially larger area of overall parkland and improved infrastructure within it, including improved networks of paths. The replacement land also already includes some mature woodland and hedgerows which would be retained and add maturity to the landscape. The ExA and the Secretary of State can therefore be confident that the "no less advantageous" test will be met. For that reason, and noting the above-mentioned controls and commitments, the Applicant is of the view that inclusion (in article 35(1) of the DCO) of a provision requiring a statement of when the Applicant considers the replacement land to be "no less advantageous" is not necessary, and may serve to inappropriately conflate the application of the section 131 test with the post-consent implementation process for the scheme contained in the DCO. The Applicant is not aware of any DCO precedent that has contained such a provision in the equivalent special category land article, including projects with a much greater impact on open space. Finally, the Applicant would observe that Luton Borough Council (the landowner of Wigmore Valley Park) and North Hertfordshire District Council, both of which constitute the relevant planning authorities,

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			are not seeking this (nor any other) amendment to article 35(1).
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 **to the extent that it is no less advantageous to the public** 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.	The Applicant does not agree with this amendment – see the Applicant's response to the ExA's comment on article 35(1) above, which applies equally here. In the context of the ExA's proposed amendment to article 35(3) there is a further complexity. Article 35(3) determines the date on which the land is to vest in the person who owned the special category land. That requires legal precision, which is lost if the subjective phrase "…to the extent that it is no less advantageous…" is added to article 35(3). The Applicant considers it is not appropriate to combine the date of vesting trigger with the section 131 "no less advantageous" test, and this could frustrate ownership of land changing hands on the date both parties to the transaction wish it to do so. Finally, the Applicant would observe that Luton Borough Council (the landowner of Wigmore Valley Park) and North Hertfordshire District Council, both of which constitute the relevant planning authorities, are not seeking this (nor any other) amendment to article 35(3).

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45 (1)	**Application of the 1990 Act** ~~**(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 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. **~~(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~~**	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 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.	The Applicant notes that the ExA is concerned that the provision may lead to a circumstance where the schemes would be built out *"potentially without any mitigation required by the ES to address an identified harm and delivered through condition"* and that this would lead to an absence of enforcement powers. The Applicant, respectfully, does not agree. The Environmental Statement for the Proposed Development includes all of the relevant mitigation in connection with the effects of the Proposed Development, including those which arise as a result of the development which gives rise to an inconsistency between the those works and the Green Horizons Park planning permission. Where an inconsistency arises, that inconsistency relates to works which would have been authorised under the DCO (if development consent is granted). The Applicant considers it would be perverse to allow enforcement action to be taken under the TCPA in connection with works which have been authorised under the DCO. The provision itself has, in principle, been accepted by the Host Authorities and only detailed drafting matters explained in **[REP7-053]** are outstanding between the Applicant and the Host Authorities. The ExA's position therefore goes beyond what the relevant local planning authorities are requesting, gives rise to a serious risk of enforcement action,

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	~~this Order, then from the point at which that inconsistency arises—~~ ~~(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) 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~~ ~~(c) any conditions on that planning permission that are inconsistent with this Order or the authorised development cease to have effect.~~ ~~(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~~	Furthermore, deletion of these sub-paragraphs 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. 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 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.	and would create uncertainty about whether works which have been lawfully authorised can proceed. The Applicant notes that the ExA states that "*deletion of these sub-paragraphs 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*". The Applicant does not agree: whilst the Green Horizons Park planning permission was obtained by the Applicant and could therefore be the subject of an application to amend or vary that existing permission, this does not apply to planning permissions held by other persons. This puts the Applicant in the position that it would face enforcement action in respect of carrying out works which have been authorised by the Secretary of State (if development consent is granted). The Applicant also considers that a route where each and every individual planning application which may be caught by the provisions is required to be amended or varied runs contrary to the purpose of the Planning Act 2008 to provide a 'one stop shop' for consenting.

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	~~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.~~ ~~(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.~~ ~~(5) Where the undertaker identifies an inconsistency between a planning permission and this Order which engages~~	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: *"In summary, failure or inability to complete a project for which planning permission has been granted does not make development carried out*	The ExA draws attention to paragraph 68 of the Hillside judgment. The Applicant acknowledges the sentence extracted but notes that the very next sentence states: *"But (in the absence of clear express provision making it severable) a planning permission is not to be construed as authorising further development if at any stage compliance with the permission becomes physically impossible."* The Applicant further notes that on 17 January 2024, the High Court issued a judgment in Dennis v London Borough of Southwark [2024] EWHC 57 (Admin). That judgement very clearly shows the risks associated with proceeding in the absence of the provisions in article 45(2)-(4). In that case, the High Court confirms that *"when granting permission for such a scheme the authority cannot be taken, "absent some clear contrary indication" to have authorised the developer to combine building part only of the proposed development with building something different from and inconsistent with the approved scheme on another part of the site"*. Mr Justice Holgate is clear that the *"test of physical impossibility applies to the whole of the site covered by the permission in question"* and goes on to note explicitly:

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	~~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 proceeding in view of that inconsistency in accordance with this article.~~ ~~(6) In this article—~~ ~~(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~~ ~~(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~~	*pursuant to the permission unlawful."*	*"An issue could arise whether any development carried on thereafter pursuant to a different permission makes it physically impossible to carry out development previously approved as reserved matters under the outline permission. If the answer is yes, then that approval of reserved matters could no longer be relied upon unless, on a true interpretation, the grant of outline planning permission was severable in some relevant way."* Applying this clear judgment to the DCO and Green Horizons Park, if works are carried out under the DCO which gives rise to an inconsistency, then the Green Horizons Park, in the words of Mr Justice Holgate, *"could no longer be relied upon."* As noted in **[REP7-053]**, these provisions are not novel and unprecedented. The Applicant notes that materially the same provisions have been included in a number of DCOs, and specific disapplication of inconsistencies in specific planning permissions was approved in the Cambridge South Transport and Works Act Order (TWAO) and indeed the Applicant's drafting further narrows and limits the effect of the provisions as compared with those precedents. Since Deadline 7, the Secretary of State has made another DCO with substantively the same provisions (see article 8(2) of The Drax Power Station

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	~~2015(a).~~		Bioenergy with Carbon Capture and Storage Extension Order 2024 which states that any previous permission granted under the TCPA is *"excluded and does not apply but only insofar as such approval, grant, permission, authorisation or agreement relates to the Order limits and is inconsistent with the authorised development and anything approved under the requirements"*). The Applicant does not consider it should be placed in a materially worse position as compared with the promoters of those DCOs, and the detailed justification provided goes above those precedents. In particular, the necessity of the provision arises from the fact that works which are authorised under the DCO should not be subject enforcement action. In the absence of the provisions, there would be gross uncertainty in ensuring that the development under the DCO could proceed. The Applicant considers that any environmental mitigation required as part of a future permission would be properly considered as part of that application (and, as noted above, the mitigation in connection with the Proposed Development is already secured). The Applicant would further note that the absence of the provision may in fact prevent or delay the delivery of essential mitigation required for the

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			Proposed Development. For example, if planning permission was obtained over land which is required for environmental mitigation, the Order could not then safely proceed to implement those works even though such works are essential mitigation and authorised under the terms of the DCO.
47	**Defence to proceedings in respect of statutory nuisance** (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 ~~**(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 -	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 of nuisance which are not anticipated by the Applicant to arise.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.
52	**Arbitration** **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 []**	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	The Applicant does not consider the proposed arbitration rules to be necessary or proportionate. In particular: a. Under the proposal, all arbitration would be subject to a prescribed timescales unless an exemption was agreed or determined by an Arbitrator. The default position would be to introduce

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	(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.	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.	up to a 3 month period for determining disputes (and potentially more). The default position would also require "Statements of Claim" and "Statements of Defence", and allow a hearing to be held. This level of fixity and prescription on the form of documents - no matter how simple or complex a dispute is - is not appropriate for all disputes, and the insertion of such a protracted process has the ability to prolong, rather than expedite and provide certainty, in relation to disputes. Such timescales would be disproportionate, costly (in terms of delay) and contrary to the public interest in the timely delivery of national infrastructure which the Planning Act 2008 was set up to facilitate. Numerous recent Government announcements and initiatives are abundantly clear that it remains Government policy to further speed up, not prolong, the planning system. b. The Applicant notes that most, if not all, transport DCOs include an arbitration provision equivalent to the Applicant's, and in the absence of a definite need, it would be unnecessary to adopt such detailed arbitration rules. In this context, the Applicant notes that Advice Note 15 sets out that: *"It may also assist applicants to consider the drafting conventions of made DCOs published by the same department as would authorise their DCO,*

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			which may help to identify that department's drafting preferences." The Applicant considers that the practice of the Department for Transport, including for DCOs and TWAOs, is clear that prescribed and fixed arbitration rules are not the preference of the Department. The Applicant and its advisers are not aware of any issues in implementing the arbitration provisions in transport DCOs. It is considered preferable that each appointed arbitrator should be able to confirm the details of each arbitration process reflecting proportionately the particular nature of the issue under dispute.
New Articles			
53	**Funding** 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 – 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	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.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8. Given the long term phased delivery programme for the Proposed Development, which is reflected by the 10-year period for exercising compulsory acquisition (CA) powers, the Applicant has made some minor revisions to the drafting to confirm that the form of guarantee or security can also be phased. In other words, the guarantee or security in any phase would relate to the exercise of any specified CA powers for that phase, and not the CA powers necessary for delivery of later phases. The

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	exercise of the relevant power in relation to that land; or 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. The provisions are – article 24 (compulsory acquisition of land); article 27 (compulsory acquisition of rights etc.); article 28 (private rights); article 31 (acquisition of subsoil or airspace only); article 32 (rights under or over streets); article 33 (temporary use of land for carrying out the authorised project); article 34 (temporary use of land for maintaining the authorised development); and article 36 (statutory undertakers).	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.	guarantee or security for the later phases would then come forward at the relevant time.

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	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. 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.		
SCHEDULES			
Schedule 1			
Work No. 5b (01) — Enhancements	**Work No. 5b (01)** — Enhancements to Wigmore Valley Park. Within the area of land shown on	The Strategic Landscape Masterplan [APP-172, provision of open space] shows as (b) enhanced surfacing and facilities	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.

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to Wigmore Valley Park.	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); (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**; and** **(g) play facilities and skate park.**	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 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	To correct an error.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.

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	a ~~form~~ **four**-arm signalised junction.		
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 realignment and widening of Windmill Road and Kimpton Road; (b) A1081 New Airport Way, B653 and Gipsy Lane. To include, the realignment and widening of A1081 New Airport Way (to provide additional traffic lanes), the realignment and widening of A505 Gipsy 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 Gipsy Lane splitter island;	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.	The Applicant considers that the need for the works has been demonstrated through the traffic modelling including within the **Transport Assessment [APP-205]** and the updated transport modelling in the Rule 9 **Accounting for Covid-19 in Transport Modelling Final Report [AS-159]** which show that the package of measures proposed by the Applicant are required to mitigate the impacts of the Proposed Development. The Applicant notes that these measures have been developed in consultation with the relevant highway authority over several years and that they are supported by the highway authority as necessary in mitigating the impacts of the Proposed Development. The Applicant's submission at Deadline 7, **8.161 Applicant's Response to Written Questions – Traffic and Transport [REP7-061**] in response to the ExA's written question TT.2.13, further showed the need for measures on Wigmore Lane, Crawley Green Road and Eaton Green Road. The response showed the level of additional traffic associated with the Proposed Development which would use Wigmore Lane, Crawley Green Road and Eaton Green Road.

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	(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; ~~**(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;**~~ ~~**(e) Wigmore Lane and Crawley Green Road. To include works to—**~~ ~~**(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;**~~ ~~**(ii) Wigmore Lane, including the realignment and widening of a lane and removal of a bus stop layby; and**~~		The response showed that the Proposed Development would add up to 30% more trips to the Wigmore Lane corridor in Assessment Phase 2a which coincides with the phase in which the proposed works are needed. The response also sets out the rationale for the extent of works with the need to ensure acceptable junction operation and queuing capacity given the relatively close proximity of the junctions. The response to TT.2.13 also shows the additional Airport related traffic expected to use Eaton Green Road and Crawley Green Road. Although the increases are more modest, this is reflected in the more modest proposals along these corridors in the signalisation of the junctions with Lalleford Road which benefit existing users from accessing/egressing the minor arm. The Applicant notes that removal of these measures would not only have significant adverse impacts on traffic movements in and around Luton but also be detrimental to non-motorised users who benefit from the proposed signalisation of the junctions which provide safer crossing opportunities. The Applicant will provide further information at Deadline 9 to show the significant adverse impact that the removal of these measures would have on the operation of the highway network.

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	~~**(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; (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;**~~ (~~**g**~~ **d**) 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;		For the reasons outlined above, the Applicant does not agree with this change and has not included it in the draft DCO submitted at Deadline 8.

Ref	ExA's recommended amendment/insertion	Reasons and notes	The Applicant's response
	(~~**h**~~ **e**) A1081/London Road (South), including partial signalisation of the existing roundabout (no kerb line amendments required) and road marking amendments; (~~**i**~~ **f**) 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; ~~**(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;**~~ (~~**k**~~ **g**) A602 Park Way/A505 Upper Tilehouse Street, including minor widening to the Park Way/Upper		

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	Tilehouse Street roundabout entries, to provide increased lengths of two lane entry and amendments to existing retaining structure and vehicle restraint system; (~~l~~ **h**) 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; (~~m~~ **i**) 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; (~~n~~ **j**) 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		

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	the roundabout onto the A1081, to allow three diverging lanes from the roundabout; (~~o~~ **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~~ **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;		

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	(~~q~~ **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 (~~r~~ **n**) A505 Vauxhall Way/Eaton Green Road, including partial signalisation of the roundabout.		
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 of any such kerb or increasing the width of any such ~~**kerb**~~, 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.	The Applicant notes the ExA's response but would make the point that there is no 'set dimension' for a kerb stone as the width, height and length of such a stone varies depending upon the intended use of the kerb stone. There is, therefore, scope for the width and height of a kerb stone to be altered or changed and so the Applicant's position remains that it is appropriate to refer to 'kerb' in the drafting. Indeed, such a reference is commonly applied and is precedented.

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Schedule 2			
1	**"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.**	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.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8, save that the Applicant considers that the defined term should be *"landscaping mitigation"* to align with the wording of Requirement 8. The phrase "landscape mitigation" does not appear in the draft DCO.
1	**"light obtrusion assessment" means Appendix 5.2 Part A of the environmental statement and Appendix 5.2 Part B of the environmental statement**	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.	The Applicant confirms that this new definition has been added into the draft DCO submitted for Deadline 8 at paragraph 1 of Schedule 2. As noted below, the Applicant has accepted the ExA's substantive request for commitments in respect of construction and operational lighting, but has absorbed these into the detailed design and CoCP requirements rather than creating a new requirement.

Ref	ExA's recommended amendment/insertion	Reasons and notes	The Applicant's response
1	**"specified authorities" means Central Bedfordshire Council, Dacorum Borough Council, Hertfordshire County Council, Luton Borough Council and North Hertfordshire District Council;**	This definition is currently included in requirement 5(7). The ExA considers it 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.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8, subject to one additional amendment. Depending on the nature of a work and the local authority area in which it takes place, one of the *"specified authorities*" will be the authority deciding the application under a Requirement. Hence it would be perverse from them to form part of the group of "specified authorities" being consulted. In view of this, the Applicant has added the following rider to the definition: "…*but excluding any of those authorities where they are the discharging authority*". The definition of *"discharging authority"* has been moved from Part 5 to Part 1 of Schedule 2, in view of this drafting amendment.
1	**"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.**	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	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.

Ref	ExA's recommended amendment/insertion	Reasons and notes	The Applicant's response
		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~~**(a) all** 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 ~~(g)~~ **(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.	The Applicant disagrees with this amendment and notes, respectfully, that the ExA's commentary is incorrect on this matter. The plans listed in (a) to (e) are <u>not</u> outline plans requiring secondary approval – they are presented "as final" in the application and (assuming consent is granted) would apply from the point of DCO implementation, without the need for a secondary approval. Nevertheless, given the long delivery period of the scheme and for reasons of proportionate flexibility, it is important that they are capable of being amended under paragraph 2 in accordance with the constraints and controls in that paragraph. This is why the plans listed in (a) to (e) are specifically called out in their own sub-paragraph, because they are <u>not</u> captured by sub-paragraph (f). Instead, any future amendment of the plans under (a) to (e) would be made under paragraph 2 of Schedule 2, and not under any other provision. Noting the ExA's commentary, the Applicant has made a number of amendments to paragraph 2 to better clarify and spell out its purpose, effect and process. This includes greater clarity in relation to

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			which local authority is responsible for granting approval. Amendments to sub-paragraphs (1) and (2) confirm that amendments to "finalised" plans (a) to (e), and amendments to any parameters, must be consulted upon with the "*specified authorities"* (i.e. all of the "host" authorities) before a decision is made by Luton Borough Council on the application. Amended sub-paragraph (2) then deals with amendments to plans etc. for which an approval is required (based upon an outline) under another paragraph of Schedule 2. This employs the *"relevant planning authority*" or the *"relevant highway authority"* as the approving body, as the identity of that body will vary depending on where the works are taking place, and what kind of works they are. For completeness, it should be noted that at Deadline 8 the "airport boundary plan (expanded)" has been added to the list of documents capable of revision under sub-paragraph (1). This is because the precise location of this boundary will be dependent upon the future detailed design, in respect of which there is a proportionate degree of flexibility. Hence the same degree of flexibility is necessary for adjusting the plan, should that prove necessary in the future.

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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 **by the relevant planning authority** 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.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8, except that the term *"discharging authority"* has been used because on some occasions the discharging authority will be the relevant highway authority. The definition of *"discharging authority"* has been moved from Part 5 to Part 1 of Schedule 2, in view of this drafting amendment.
5	**Detailed design~~, phasing and implementation~~**	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.	The Applicant has accepted the ExA's request to add a standalone "phasing" requirement at new paragraph 5 of the draft DCO (see below the Applicant's adjustments to the ExA's proposed form of phasing requirement) and the Applicant has, accordingly, made this change to the heading of what is now paragraph 6 of Schedule 2.
5(1)	(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 relevant planning	The ExA considers the drafting to be unnecessary.	The Applicant has incorporated this change as part of a more substantive revision of this requirement which has resulted in the removal of "*relevant highway authority"* as a listed consultee under sub-paragraph (1).

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	authority, following consultation with the relevant highway authority **~~on matters related to its functions~~**.		To explain the wider change, the Applicant has (at Deadline 8) inserted a new sub-paragraph (3) of the "detailed design" requirement, which deals with matters of detailed design approval for all highway works. The Applicant considers that this provides greater clarity, precision and drafting efficiency, for the following reasons. The Applicant highlights that Schedule 8 to the draft DCO contains protective provisions for both National Highways and local highway authorities. Both of these sets of protective provisions require approval of road works by the relevant highway authority prior to the works commencing (the Applicant has made this amendment in the Deadline 8 protective provisions for local highway authorities, in response to written submissions from those authorities). The nature of the plans requiring approval under Schedule 8 are very detailed and specific to highways and differ from the detailed design information required under sub-paragraph (2) of the "detailed design" requirement, which is principally directed at airport development rather than highways. Consequently, this change gives much greater clarity to both local authorities and the Applicant in terms of what a specific detailed design application should contain, depending on the nature of the works. It also avoids any duplication between the

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			"detailed design" requirement and the protective provisions of Schedule 8 relating to road works. By reason of new sub-paragraph (3), there is no need for the relevant highway authority to be listed as a consultee under sub-paragraph (2), because they now hold an approval function for works which affect their assets: - under new sub-paragraph (3) the relevant local highway authority will now approve works to local roads and to other local highways (e.g. footpaths and bridleways); and - for works in relation to strategic roads, approval will be required from both the relevant highway authority (National Highways) under Schedule 8, and the relevant planning authority under sub-paragraph (3). By reason that the nature and scale of detailed design applications under sub-paragraphs (1) and (3) will vary considerably in size (due to the phased delivery of works), the Applicant does not consider it proportionate to list specific consultees in the detailed design requirement. Instead the relevant planning authority or relevant highway authority (as the case may be) will be best placed to determine consultation requirements when exercising their role as "discharging authority" on an application.

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			Furthermore the Applicant notes that, following Deadline 8 amendments recommended by the ExA, the "discharging authority" under Part 5 is now under a *duty* to consult the relevant bodies listed under Part 5 of Schedule 2 where the relevant conditions which engage them are met.
5(2)	Add as an additional criterion to the list in 5(2): **A detailed 'Glint and Glare' assessment in respect of any part comprising solar energy production or canopies to support photovoltaic panels.**	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.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.
5(2)(c)	(c) ~~where relevant to the Schedule 1 works to which the application relates,~~ **In respect of Works Nos. 3b(01), 3b(02), 3f and 4a**, a report setting out ~~how the design review process set out in the design principles has been taken into account;~~**:** **(i) the design approach and how the design principles have been incorporated into the final design; and**	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	The Applicant agrees with these changes and has incorporated them into sub-paragraph (c), subject to one exception. The Applicant does not agree that the design review process should be set out in a Schedule to the DCO. The **Design Principles** document [**REP7-034**] is already secured by the draft DCO and will be certified by the Secretary of State as the design principles for the purposes of the DCO under article 50 (certification of documents).

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	(ii) details of the design review process secured under Schedule [] of this Order and how the design review process has informed the final design.	be secured on the face of the Order and inserted as a new schedule.	The Design Principles document contains design principles which apply to all of the Proposed Development as well as to the identified works which require the design review process to be followed. It is not necessary to secure the design review process on the face of the DCO, as it is already secured through the Design Principles. As noted above, the Applicant is seeking proportionate flexibility for the Design Principles to be refined in later years under paragraph 2 of Schedule 2, which may well be something the relevant local planning authority would welcome. This is provided if secured through the Design Principles. This would not be possible, without a change to the DCO itself, which would take longer and not be proportionate if the content of the Design Principles (including the design review process) is set out on the 'face' of the DCO. The Applicant remains of the opinion that the required clarity is best served by incorporating into a single document both the overarching design principles and the design review process. This means that the Applicant and the relevant planning authority has a single reference source in preparing and considering the subsequent application for detailed design. Certain elements of the detailed design review process are to be secured by a s106 obligation – in

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			particular payment of costs in relation to the detailed design review process. As far as the Applicant is aware, the host local authorities (in particular, Luton Borough Council) have not asked for the design review process to appear on the 'face' of the DCO.
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 practicable following the service of notice under article 44(1); (b) an expected programme of works for each subsequent five-year period, prior to the completion of the previous five-year period;~~ ~~(7) In paragraph (6), "specified authorities" means Central Bedfordshire Council, Dacorum Borough Council, Hertfordshire County Council, Luton Borough Council and North Hertfordshire District Council.~~	The ExA considers that these sub-paragraphs would be better as a standalone requirement – see new requirements section of this table for comments/ amendments to the proposed drafting.	The Applicant has accepted the ExA's request to add a standalone "phasing" Requirement at new paragraph 5 of the draft DCO. See below the Applicant's adjustments to the ExA's proposed form of phasing Requirement.
7(2)	(2) No part of the authorised development may commence until the following management plans have been developed for	The purpose of the Code of Construction Practice (CoCP) is to manage the construction process and as such the	The Applicant does not agree with Luton Borough Council being listed as the approving authority for the specific construction management plans listed in

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	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~~ **Luton Borough Council** following consultation with the **specified authorities,** relevant highway authority **and other relevant consultees** ~~on matters related to its functions –~~ (a) framework materials management plan; (b) carbon efficiency plan; (c) construction surface water management strategy; (d) construction noise and vibration management plan; (e) community engagement plan; (f) emergency plan; (g) pollution incident control plan; and (h) dust management plan; **(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**	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 number of bodies such as the Environment Agency, Thames Water, Affinity Water etc for a number of these plans. 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	this requirement, because: (i) this does not align with the flexibility Schedule 2 allows elsewhere to deliver the project in "parts"; and (ii) it does not recognise that some of those "parts" (in particular some highway works, drainage works, fuel pipeline works and replacement park works) take place in areas where the "relevant planning authority" is not Luton Borough Council. To explain further, the CoCP is the "framework" document for construction and it is "secured" as a finalised document at the point of consent (and as noted above, any future amendments to the CoCP would require Luton Borough Council approval as the "main" host authority). The various construction management plans referred to in the CoCP Requirement will relate to a discrete "part" of the scheme being delivered, and it is appropriate for the relevant planning authority (which may not be Luton Borough Council) to approve those plans. The definition of "relevant planning authority" in Article 2 has been adjusted by the Applicant at Deadline 8 and leaves no doubt as who that body is – i.e. the planning authority for the area in which the part of the authorised development, to which the provision relates, is situated. So, any of these management plans would be approved by the planning authority in whose area the physical works (to which the construction management plans relate)

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	those plans and been approved in writing by Luton Borough Council following consultation with the specified authorities, relevant highway authority and other relevant consultees - (a) site waste management plan (to be substantially in accordance with the outline site waste management plan); ~~and~~ (b) soil management plan (to be substantially in accordance with the outline soil management plan)**; and** **(c) outline strategy report for groundwater, ground gas and leachate monitoring.**	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.	are located. In the rare circumstances where the works subject to an application under this Requirement straddles a local authority boundary, then each authority would "sign off" the plan in relation to the works in their area. The Applicant agrees with the ExA that the term "relevant highway authority" is more uncertain in relation to the impact of construction management plans listed under this requirement, However, it disagrees with the ExA's proposal for these to be consulted upon instead with all of the "specified authorities". Such a blanket obligation to consult all host authorities on every draft management plan would frequently result in disproportionate consultation obligations for management plans which have no impact beyond the immediate locality. For example, for highway works taking place in Hitchin, it would be disproportionate for Hertfordshire County Council to have to consult distant local authorities on a dust management plan for those highway works By reason that discrete parts of the development, delivered incrementally, will vary considerably in size, the Applicant does not consider it proportionate to list specific consultees for management plans listed in this requirement. Instead the relevant planning authority will be best placed to determine appropriate consultation requirements when

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			exercising their role as "discharging authority" on an application. Furthermore, the Applicant notes that, following Deadline 8 amendments recommended by the ExA, the "discharging authority" under Part 5 is now under a *duty* to consult the relevant bodies listed under Part 5 of Schedule 2 where the relevant conditions which engage them are met.
8(2)	(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 – (d) hard landscaping and materials, **including colour, boundary treatment, ~~minor~~** structures and street furniture; **~~and~~** (e) a timetable for the implementation of the landscaping works**;** **(f) change to existing land levels, including cross sections showing slope profiles and gradients of any permanent earthworks; and**	(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. (f) The ExA notes the Applicant's response [REP3-073] although no 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.	The Applicant confirms that the amendment to 8(2)(d) has been made in the draft DCO submitted for Deadline 8 and that a new 8(2)(f) is also now included. The Applicant does not agree that (g) should be included – see the Applicant's responses to the ExA's article 35(1) and (3) amendments above, which sets out the Applicant's detailed reasoning for its opposition to this change.

Ref	ExA's recommended amendment/insertion	Reasons and notes	The Applicant's response
	(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.	(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)**, and thereafter maintained in accordance with the relevant landscape and biodiversity management plan for that part approved under paragraph 9.**	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.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.
9(1)	(1) No part of the authorised development may commence**, nor may powers under article 22 (felling or lopping of trees and removal of hedgerows) be exercised,** until for that part a landscape and biodiversity	To improve precision and clarity.	The Applicant has accepted this change in the Deadline 8 version of the draft DCO, save with this amendment to confirm alignment with the ability to deliver the scheme in "parts":

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	management plan has been submitted **to** and approved in writing by the relevant planning authority.		"…nor may powers under article 22 (felling or lopping of trees and removal of hedgerows) be exercised in relation to that part…"
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. **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**	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].	There is no legal requirement to secure on the face of the draft DCO a commitment to 10% biodiversity net gain, as such a legal commitment does not yet apply to Nationally Significant Infrastructure Projects (NSIPs) and is not expected to apply until 2025. As a result, this amendment is not supported by existing law or policy in relation to NSIPs, and so is not appropriate on that basis. The Applicant emphasises that it is committed to delivering a 10% overall biodiversity net gain as proposed by the Applicant in **Chapter 8** of the **ES [AS-027]**, but this should not be a legal requirement under the draft DCO for the reasons set out above.
9	(4) Any tree or shrub planted as part of a landscaping scheme, that within the specified period after planting, is removed, **uprooted, destroyed,** dies or becomes in the opinion of the relevant planning authority seriously damaged or diseased,	To cover all eventualities that might result in the need to replace planting.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.

Ref	ExA's recommended amendment/insertion	Reasons and notes	The Applicant's response
	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.		
9	(5) In this paragraph, "specified period" means**:** **(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 Work No.5e in Schedule 1 to this Order; and** **(b) a period of 5 years in all other respects,** or such other period as may be specified in accordance with the landscaping and biodiversity management plan.	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 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). Work No.5b(02) has been specifically excluded from sub-paragraph (a) noting that a	The Applicant does not agree with this amendment, because it considers that the substantive outcome the ExA is seeking to secure will already be proportionately met by the framework proposed by the Applicant. The 'specified period' of five years relates specifically to the period for the replacement of trees or shrubs planted as part of the landscaping scheme provided for in requirement 9(4) that has died or failed such that it must be replaced. This is in recognition that most planting that fails does so in the first five years of planting before it can become established and so it is appropriate to replace that dead or failed planting. Article 34 (Temporary use of the land for maintaining the authorised development) provides the Applicant with the necessary powers during the 'maintenance period' to enter upon and take temporary possession of Order land to remove the failed planting and replace with new.

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		separate arrangement for the operational management of the replacement land is proposed in Schedule 3 of the draft Section 106 agreement. The period covered in sub-paragraph 5(b) relates to any other landscaping specified in remaining work numbers.	The 'maintenance period' is normally five years from the date that that part of the authorised development is completed so allows for the possibility that planting will take place in different years. However, in relation to the **Outline Landscape and Biodiversity Management Plan [AS-029]** secured by Requirement 9, this maintenance period means any such period as may be approved by the local planning authority in the final Landscaping and Biodiversity Management Plan. The outline plan already commits to a 50 year period of management of the planting (see section 1.4), which extends beyond the initial specified period of five years for the replacement of failed planting as described above. As such, the Applicant does not believe that the recommended drafting of the ExA is required, as the issue is proportionately provided for. To elaborate on the proportionality point, the Applicant is concerned that the ExA's proposed drafting will place on the Applicant an obligation to replace each and every single failed tree or shrub for a period of 30 years from point of planting. By reason of how the planting matures over that period, it may not be necessary to re-plant each single specimen of other specimen around it have

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			sufficiently matured in the same location and provides the necessary mitigation. Furthermore, by applying the 30-year replacement obligation to entire work numbers, it may create an intended consequence for vegetation specimens within a scheme which have a "normal" lifespan of less than 30 years which are purposely included in the initial landscaping scheme with a view to replacing them with different specimens at a later stage. The ExA's drafting could frustrate such active and adaptive management of the sites.
10	(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 **in consultation with Natural England** or, where appropriate, a protected species licence has been granted by Natural England.	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.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.

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11	**'Previously unidentified land contamination and contaminated groundwater'** ~~**'Contaminated land and groundwater'**~~	To improve precision and clarity.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.
11(2)	Where the undertaker determines that remediation of the ~~**contaminated land**~~ **land contamination** is necessary **consequent to the risk assessment in 11(1),** 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**~~.	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.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.
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	The ExA considers the drafting to be unnecessary.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.

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	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 authority, following consultation with the Environment Agency and the relevant water undertaker ~~**on matters related to their functions**~~**.**		
11(5)	~~**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** 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**~~	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.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.

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	~~**matters related to their functions**~~.		
12	**Surface and foul water drainage** (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 Environment Agency, the lead local flood authority and the relevant water and sewerage undertakers ~~**in matters related to their functions**~~. (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— (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;**~~	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. In deleting (2) (a) (4) becomes unnecessary and should be deleted.	The Applicant is content to accept the ExA's change to sub-paragraph (1) but does not agree with the ExA's recommended amendments to the rest of this Requirement. The Applicant emphasises that these changes were specifically made in response to drafting requests from Affinity Water, with a view to seeking removal of their objections. Furthermore, the reference to the Drainage Design Statement (DDS) as a whole is not necessary in this Requirement, because the drainage design principles which guide drainage design were added from the DDS to the **Design Principles [REP7-034]** at Deadline 5. That was to ensure that all of the relevant design principles were in a single document. This reflected commentary from the ExA, during ISH6, that it would be helpful to consolidate all design principles into a single document. The Applicant notes that the ExA's amendments would leave the term "drainage principles" in the Requirement, but undefined; furthermore the ExA's deletions in (a) would not align with the ExA's retained (c).

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	compliance with the drainage design statement unless otherwise agreed; (b) details on the means of long-term monitoring to be carried out; and (c) details on the mitigation measures to be implemented if the performance specifications referred to in sub-paragraph (a) are not met. (3) The authorised development must be carried out in accordance with the details approved under sub-paragraph (1). ~~**(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**~~.		

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13(1)	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**~~ **Luton Borough Council,** following consultation with the **specified authorities, Buckinghamshire Council and** relevant highway authority ~~**on matters related to its function**~~.	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. The ExA considers that the use of the phrase 'on matters related to their function' is unnecessary.	The Applicant does not agree with Luton Borough Council being listed as the approving authority for the construction traffic management plan (CTMP), because: (i) this does not align with the flexibility Schedule 2 allows elsewhere to deliver the project in "parts"; and (ii) it does not recognise that some of those "parts", in particular highway works, take place in areas where the "relevant planning authority" is not Luton Borough Council. Due to the phased delivery of different parts of the Proposed Development, the CTMP will relate to discrete "parts" being delivered, and it is appropriate for the relevant planning authority (which may not be Luton Borough Council) to approve a plan for works in their area. The definition of "relevant planning authority" in Article 2 has been adjusted by the Applicant at Deadline 8 and leaves no doubt as who that body is – i.e. the planning authority for the area in which the part of the authorised development, to which the provision relates, is situated. So any CTMP would be approved by the planning authority in whose area the physical works (to which the CTMP relates) are located. In the rare circumstances where the works subject to an application under this Requirement straddles a local authority boundary, then each authority would "sign off" the CTMP in relation to the works in their area.

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			The Applicant agrees with the ExA that the term "relevant highway authority" is more uncertain in relation to the impact of the CTMP, and so it agrees with the ExA's proposal for the CTMP to be consulted upon instead with the "specified authorities" (as defined above). This change has been made. National Highways has also been added as a consultee, given that the CTMP will address routes for construction traffic. The Applicant does not consider that "other relevant consultees" is sufficiently precise for inclusion, and highlights that the "additional consultee" mechanism in Part 5 of Schedule 2 already allows for this. Furthermore, at Deadline 8 the Applicant has agreed with the ExA's recommendation for this to be "must consult", rather than "may consult" (i.e. a duty rather than a discretion – see further below).
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~~ Luton Borough Council,** following consultation with the **specified authorities, Buckinghamshire Council and** relevant highway authority **~~on~~**	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	The Applicant does not agree with Luton Borough Council being listed as the approving authority for the construction workers travel plan (CWTP), because: (i) this does not align with the flexibility Schedule 2 allows elsewhere to deliver the project in "parts"; and (ii) it does not recognise that some of those "parts", in particular highway works, take place in areas where the "relevant planning authority" is not Luton Borough Council. Due to the phased delivery of different parts of the Proposed Development, the CWTP will relate to

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	~~**matters related to its function**~~.	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 phrase 'on matters related to their function' is unnecessary.	discrete "parts" being delivered, and it is appropriate for the relevant planning authority (which may not be Luton Borough Council) to approve a plan for works in their area. The definition of "relevant planning authority" in Article 2 has been adjusted by the Applicant at Deadline 8 and leaves no doubt as who that body is – i.e. the planning authority for the area in which the part of the authorised development, to which the provision relates, is situated. So, any CWTP would be approved by the planning authority in whose area the physical works (to which the CWTP relates) are located. In the rare circumstances where the works subject to an application under this Requirement straddles a local authority boundary, then each authority would "sign off" the CWTP in relation to the works in their area. The Applicant agrees with the ExA that the term "relevant highway authority" is more uncertain in relation to the impact of the CWTP, and so it agrees with the ExA's proposal for the CWTP to be consulted upon instead with the "specified authorities" (as defined above). This change has been made. The Applicant does not consider that "other relevant consultees" is sufficiently precise for inclusion, and highlights that the "additional consultee" mechanism in Part 5 of Schedule 2 already allows for this. Furthermore, at Deadline 8 the Applicant has agreed

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			with the ExA's recommendation for this to be "must consult", rather than "may consult" (i.e. a duty rather than a discretion – see further below).
15(1)	(1) The authorised development must be carried out in accordance with the cultural heritage management plan and any **site-specific** 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.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.
15(2)	(2) Where the cultural heritage management plan provides for the subsequent approval of the relevant planning authority of a **site-specific** 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 **site-specific** written scheme for the investigation of areas of archaeological interest, **incorporating the details set out in** the cultural heritage management plan**,** has been submitted to and approved in	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. The ExA considers that the use of the phrase 'on matters related to its function' is unnecessary.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.

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	writing by the relevant planning authority following consultation, where applicable, with Historic England ~~**on matters related to its functions**~~.		
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 **relevant part of the** authorised development **to which the site-specific written scheme of investigation relates,** 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.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.
16(1)	(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.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.

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	(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**~~.		
17	"Monitoring Report" means a report submitted to the ESG, containing monitoring and Assessments **prepared by competent persons**, 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.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.
17	**"Competent Person" means a person that has sufficient training and experience or knowledge to undertake monitoring and / or reporting.**	For precision and enforceability, the ExA considers that a definition for 'competent person' needs to be included.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.
18	~~**Exceedance of air quality Level 2 Threshold or Limit**~~	The ExA considers that this requirement would duplicate controls within Requirements	The Applicant does not agree that this requirement duplicates the controls within Requirements 21, 22 and 23. Section 3.3 of the **Green Controlled**

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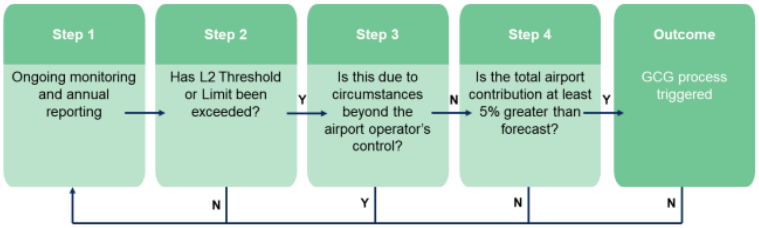
	~~For the purposes of this Part, unless otherwise agreed between the undertaker and the ESG, the exceedance of a Level 2 Threshold or Limit relating to air quality requires –~~ ~~(a) an exceedance of the annual average pollutant concentrations in Table 4.3 of the green controlled growth framework; and~~ ~~(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.~~	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 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.	**Growth Explanatory Note [REP7-018]** sets out that relative contribution of the airport to any air quality issues is the key factor to be addressed within GCG, as the majority of existing and future pollution at most receptors are unrelated to the airport and are or will be outside of the airport's control. The same section also highlights that the impact of the Proposed Development on air quality cannot be directly measured, and as such proposes a different, two-stage approach to air quality within the GCG Framework, summarised in Figure 3.9 of the GCG Explanatory Note (reproduced below). This two-stage process allows GCG to firstly identify where national air quality objectives have been or are at risk of being exceeded, and then determines the airport's contribution to that exceedance. Figure 3.9: Process for monitoring air quality at locations in scope for GCG, and determining airport contribution  The removal of Requirement 18 would have the effect of removing the second step of that process (Step 4 in the figure above) and would have the practical effect of holding the airport responsible for any exceedance of the Limit, regardless of the extent to which the airport has contributed to that

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			exceedance. Indeed, with the removal of Requirement 18 the GCG process would apply, and airport growth would be halted, even where the airport had no contribution at all to an exceedance of the Limit. Section 3.3 of the GCG Explanatory Note also sets out the rationale for the '5% greater than modelled' part of the Requirement, which is required both due to practical constraints around monitoring and the underlying principles of the GCG Framework. Firstly, as the ExA notes, the GCG Air Quality Limits have been derived through extensive air quality modelling, through which it is possible to isolate the airport's contribution to pollutant concentrations at a given location. In practice, it is not possible to achieve the same level of accuracy when apportioning the source of monitored data, hence the inclusion of a small buffer to allow for discrepancies between these two data sources and modelled and monitored accuracy. In addition, the purpose of the GCG Framework is to protect against environmental impacts that are greater than those that were forecast and formed the basis for obtaining development consent. Even allowing for a process whereby the airport's contribution is compared to the original forecast (which is not captured by the ExA's suggested drafting), this could result in a situation where airport growth is stopped, with significant financial consequences for the airport operator, due to a

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			negligible change in pollutant concentrations. The choice of a 5% buffer aligns with the industry-standard guidance from Environmental Protection UK (EPUK) and the Institute of Air Quality Management (IAQM) used to define the significance of air quality impacts, as explained at Paragraph 3.3.23 of the GCG Explanatory Note. Finally, the Applicant would note that it is not aware of the use of this two-stage process, or the use of a 5% buffer, being raised as an issue by any Interested Party (including the Host Authorities) or the Examining Authority to date.
19(2)	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.	The Applicant has always accepted that a role on the ESG should be offered to those local authorities that are impacted across the whole range of environmental topics within the scope of GCG. However, it is not accepted that host authority status automatically implies this, nor that this is the case for Dacorum Borough Council. It is acknowledged that Dacorum Borough Council falls within the forecast noise contours that form the basis of the GCG Noise Limits. On this basis, the Applicant welcomes attendance from Dacorum on the Noise Technical Panel. However, Figure 4.1 of the **Green Controlled Growth Framework [REP7-020]** shows locations where air quality will be monitored for the purposes of Green Controlled Growth. None of these locations

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			are in Dacorum, on the basis that air quality impacts in Dacorum are forecast to be negligible. Similarly, **Appendix A of the Transport Assessment [APP-200]** shows the locations of proposed off-site highway mitigation measures on the basis that these are the locations where transport impacts are potentially significant enough to require mitigation. None of these locations are in Dacorum. These conclusions have been validated by the Rule 9 transport modelling and whilst discussions with the Host Authorities are ongoing, it is understood that the conclusions of this modelling are largely accepted. On this basis, the Applicant considers that Dacorum Borough Council will not experience impacts across the whole range of environmental topics within the scope of GCG and therefore do not consider it appropriate for the Council to have a role on the ESG.
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 **and the slot allocation expert** the date of their appointment in accordance with the terms of reference; ~~**and**~~	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	The Applicant accepts the amendments suggested to sub-paragraph (3)(a) and these have been carried through in the draft DCO submitted at Deadline 8. Part (c) is already included in the draft DCO. In relation to the substitution of subparagraph (3)(b), the Applicant notes that the ExA indicates it wishes to ensure *" the local authorities are able to act autonomously in making staffing decisions relating to attendance".* The Applicant does not agree, and

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	~~(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~~ **(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** **(c) the membership of the ESG may include such additional individuals or bodies as agreed by the ESG and the undertaker.**	staffing decisions relating to attendance. Paragraph A2.1.14 of GCG Framework Appendix A [REP7-022] must be amended to reflect this change.	considers that the ESG must have representatives who are technically competent, non-politically appointed, and are able to ensure decisions are made objectively and within the parameters set out in the Terms of Reference. In particular, ESG is intended to deal with questions of whether a Level 2 or Mitigation Plan achieves their intended outcomes, approve variations to Monitoring Plans and which determines whether exceedances of Thresholds and Limits are within the control of the airport operator. The Applicant is concerned that allowing unfettered discretion will lead to a situation in which the representatives are not able to fulfil those requirements. The Applicant considers that the decisions of ESG are akin to a decision which is ordinarily taken by planning officers with delegated powers in respect of planning decisions. As noted, the Applicant is also working toward securing financial contributions for officer attendance. The Applicant further notes that the ExA's suggestion goes beyond what the Host Authorities have requested (at Deadline 7) to merely extend the pool of membership to any officer, rather than any person. The Applicant notes that the ExA have not replicated their request for the representatives to be "competent persons" in this context, thereby exacerbating this risk. The Applicant considers that an independent chairperson is capable of making objective

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			determinations of whether an individual meets any required criteria.. The Applicant has put forward the ground-breaking and innovative framework - above and beyond any UK airport - of GCG to ensure environmental limits are respected. The potential introduction of persons who would not be technically capable into the decision making therefore undermines the confidence of the Applicant that GCG would deliver a framework which appropriately balances the safe and commercial operation of the airport whilst making that operation subject to environmental limits.
19(4)/ (5)	**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.**	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.	The Applicant acknowledges the concern of the ExA to ensure that local authority views are represented at the ESG. The Applicant would note that under the Terms of Reference, reasonable endeavours to ensure 100% attendance are required. The Applicant is concerned that requiring 50% of the local authorities to be in attendance may lead to a risk that the GCG process is frustrated through deliberate or other non-attendance. As explained in Section 3.5 of the **Applicant's Post-Hearing Submission for Issue Specific Hearing 9 [REP6-067]**, the timescales for the operation of GCG rely on the timescales set out in the Draft DCO to ensure that any measures or capacity increases are taken with a consideration of a Level 2 or Mitigation Plan approved by the ESG.

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			Increasing the quorum requirements may perversely lead to a situation in which decisions are not capable of being taken and therefore actions that might otherwise be required to be secured through the slot allocation process could not be taken (for example changes to the capacity declaration to either mitigate an impact or allow for permitted growth). The Applicant considers not being able to take such decisions is disproportionate where the GCG Framework is working as intended. The Applicant also stresses that the functions of ESG are technical and requires independent persons to approve and review proposals put forward by the airport operator. Nonetheless, in recognition of the ExA's concern, the Applicant is proposing to amend the Terms of Reference to: 1. Require at least two local authority representatives to be in attendance. The Applicant considers that with the attendance of three independents, and at least two local authorities, sufficient technically competent persons as well as those representing local communities will be present without increasing the risk of the GCG process being frustrated. 2. In the event that quorum cannot be achieved at the first scheduled meeting, then a further meeting will be held within seven days with a reduced quorate requirement.

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			Both meetings will be subject to the requirement to use reasonable endeavours to ensure 100% attendance (and indeed, the Applicant has stressed on multiple occasions that it welcomes and encourages the scrutiny provided by local authority attendance at meetings of ESG), but given the timely operation of GCG is, in the Applicant's view, imperative in ensuring Mitigation Plans or Level 2 Plans are implemented as soon as possible, there is a reduced quorate requirement (i.e., all three independents and one local authority). In the Applicant's view this will also ensure there is an incentive to ensure that the GCG process is not frustrated whilst at all times ensuring local communities are represented.
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. **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.**	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.	For the reasons set out above, the Applicant considers that the independent chairperson, who is independent of the Applicant and the operator, is the appropriate person to determine whether an individual meets the competency requirements. The Applicant notes that the definition of *"technical representative*" under paragraph 19 already covers "*a representative that is suitably qualified or has significant technical experience in either air quality, greenhouse gas emissions, noise or surface access and excludes elected representatives"*.

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19(9)/ (10)	**Technical panels are considered to be quorate for the purposes of decision making where the independent technical expert and at least 50% of other technical representatives are present.**	To ensure that decisions reflect the views of the local authority members. Section B2.2 of GCG Framework Appendix B [REP7-024] to be amended to reflect this change.	The Applicant refers to its response in respect of paragraph 19(4) and (5) of Schedule 2 provided above.
20(1)(2)	20.—(1) The undertaker must, in accordance with the Monitoring Plans, monitor— ~~(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)**.** ~~**; 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**~~	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.	The Applicant has significant concerns that the proposed changes made by the ExA could delay the implementation of the Proposed Development. As set out in the **Applicant's Response to Issue Specific Hearing 1 Actions 20, 21, 24 and 26 and Issue Specific Hearing 3 Action 28: Green Controlled Growth - Transition Period and Slot Allocation Process [REP4-067]** GCG is a process that is unique for both airports and major infrastructure projects more generally and will require the airport operator to implement and undertake a number of actions, processes and monitoring activities that are not yet established, including undertaking new air quality monitoring at 15 off-airport locations, each of which will require the installation of new air quality monitoring equipment, as well as revised approaches to monitoring and reporting of greenhouse gas emissions and staff travel.

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	~~**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 of the first full calendar year after the date that notice is served;**~~ **(a) in respect of all monitoring themes, 31 July following the end of the first full calendar year of monitoring; and** ~~**(c)**~~**(b)** ~~**then**~~ thereafter a Monitoring Report on or before 31 July is required to be submitted each year.		Implementing these new processes and installing new monitoring equipment will in itself take considerable time, and if a requirement to do so a minimum of 12 months in advance of Article 44 notice being served is imposed, this would have significant implications for the implementation programme of the Proposed Development. The basis for seeking such a change is not clear to the Applicant. Based on the submissions made by the Host Authorities at Deadline 7 **[REP7-083, REP7-085, REP7-089]** as well as ongoing Statement of Common Ground discussions, it is understood that any residual concerns held by the Host Authorities in relation to the timing of commencement of monitoring relate to air quality only. To address the Host Authorities concerns, the Applicant has confirmed that monitoring equipment would be set up in advance of the first full year of GCG monitoring to ensure all equipment is working correctly and data is being provided to a good level of accuracy. In practice this would require the air quality monitoring equipment to be set up three to six months in advance. There is no requirement in the GCG process to collect any baseline data or to capture a baseline position as (with the exception of air quality) the airport's environmental impacts will be measured directly and compared against the Thresholds and

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			Limits secured through the **Green Controlled Growth Framework [REP7-020]**. It is further understood on the basis of the submissions made by the Hertfordshire Host Authorities at Deadline 7 **[REP7-085]**, noting that this point was not raised by either Central Bedfordshire Council or Luton Borough Council, that the request to commence air quality monitoring earlier than proposed was so that short term exceedances could be monitored and reported through the Green Controlled Growth Framework. As reflected in the **Applicant's response to Deadline 7 Submissions [TR020001/APP/8.175]** and the updated Statements of Common Ground to be submitted at Deadline 9, it has now been agreed that short term air quality impacts would sit outside the scope of the GCG Framework and there is no requirement to undertake monitoring for the purposes of Green Controlled Growth prior to the service of notice under Article 44 on this basis. In respect of the proposed changes to sub-paragraph (2), the effect of these changes would be that the first Monitoring Report to which the GCG process would apply would include a mixture of baseline data, without the Proposed Development, and data collected after the development was implemented. In an extreme case, this could be 364 days of baseline data and 1 day of data relevant to the Proposed Development, with a consequent risk that controls on growth are applied to the Proposed

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			Development on the basis of baseline environmental conditions. On this basis the proposed changes are not considered appropriate, as the GCG Framework has always been developed to apply to the Proposed Development only. Notwithstanding this, there would only be a very short period between service of the notice under Article 44(1) and all elements of GCG commencing, during which there is little scope for material growth at the airport, and during which the Travel Plan and Greenhouse Gases Action Plan would be in operation. There is therefore no reason to believe that a new or unexpected adverse impact would arise that would need to be controlled through Green Controlled Growth.
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). **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**	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.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.

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	introduced to reduce these incidents in the future.		
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.**~~	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.	The Applicant strongly disagrees with the deletion of these provisions. The purpose of ESG is to provide a process by which the airport operates within the environmental limits put forward. It is not appropriate to allow for unfettered considerations to play a role in decision making. For example, if this provision were removed, the ESG may decide that it no longer supports airport capacity growth (despite it being authorised under the DCO, if development consent is granted) even where the Limits would not be breached. Whilst such a decision would be capable of being appealed, it is not considered proportionate to require such a route to be taken. That scenario is just one example, and the introduction or potential consideration of irrelevant, or immaterial, considerations in the context of the GCG Framework which requires technical decision making is not considered appropriate. Such a risk would introduce substantial uncertainty in realising the growth authorised under the DCO and would create the serious risk that the DCO is simply not implemented because of that risk.

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22(7) and (8)	(7) Where the ESG has refused **or failed to determine** a Level 2 Plan, the undertaker must no later than 42 days starting the day after the decision **or the date that the decision was due to be made by ~~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.~~	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.	As noted in Section 3.5 of the **Applicant's Post-Hearing Submission for Issue Specific Hearing 9 [REP6-067]**, the timescales and process for GCG has been provided to ensure that it aligns with the established process for the declaration of available slots. In circumstances where there are clear requirements to hold a meeting and, under the Terms of Reference, to ensure 100% attendance, the Applicant does not consider it be proportionate to remove a deemed acceptance. The absence of a deemed approval runs a risk of allowing the process to be frustrated, thereby preventing or delaying the implementation of a Level 2 Plan or a Mitigation Plan as well as preventing the airport to grow to its authorised capacity (if development consent were granted). The concept of deemed consents are well precedented and ensure expeditious decision making. Given the clear parameters for Level 2 Plans and Mitigation Plans, the aforementioned requirements in the Terms of Reference and their connection to the established programme for airport capacity declarations and slot availability, it is considered their use in this context is specifically justified and necessary.

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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—	To provide clarity in the drafting.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8.
23(7) and (8)	(7) Where the ESG has refused **or failed to determine** a Mitigation Plan, the undertaker must no later than 42 days starting the day after the decision **or the date that the decision was due to be made by ~~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 Mitigation Plan.~~**	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.	The Applicant refers to its response provided in respect of paragraph 22(7) and (8) above. For the reasons explained in that response, the Applicant does not accept the case for this proposed amendment.

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23(10)	(a) the undertaker submits a Monitoring Report ~~2 years~~ **1 year** 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.	The Applicant stresses that the purpose of sub-paragraph (a) is to provide a "backstop", and that the intention and effect of paragraph 23(10)(a)-(b) is to require a Mitigation Plan to be effective as soon as practicable (under subparagraph (b)) or a maximum of 2 years before a revised Mitigation Plan is required. Given the requirement for a Mitigation Plan is to require measures to remove an exceedance as soon as reasonably practicable, and such a plan must be approved by the ESG, it is not considered appropriate nor necessary to require a revised Mitigation Plan to be submitted in 12 months (even if the period accounted for a period in which the Monitoring Report was not available). Notwithstanding the Applicant's in principle view above, and without prejudice, the Applicant would politely suggest that if the ExA is minded to recommend this amendment that "unless the ESG agrees to a longer period" after "1 year" so that the ESG's discretion is not fettered to approve a plan which – whilst containing all reasonably practicable measures – anticipated a longer period. Such a proviso would avoid the unnecessary requirement to submit a revised Mitigation Plan in circumstances where the ESG (or Secretary of State) agree that the measures are sufficient but may take longer than 12 months to have effect.
23(13)	**~~(13) Where the ESG has failed to make a decision under sub-~~**	The ExA notes the Applicant's aspiration for the ESG to make	The Applicant refers to its response provided in respect of paragraph 22(7) and (8) above. For the

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	~~**paragraph (12) within the time period specified in that sub-paragraph, it is deemed to have approved the updated Mitigation Plan.**~~	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.	reasons explained in that response, the Applicant does not accept the case for this proposed amendment.
23 (15)	**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 and shall be paid into the Community First Fund.**	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.	The Applicant is concerned that a proposal for financial sanctions has not been suggested prior to the Host Authorities Deadline 7 submissions and as such it has not been able to set out its position on the proposal or suggest possible alternative approaches. The Applicant does not consider the imposition of financial penalties in this context is appropriate, necessary or proportionate. As set out in Section 2.7 of the **Green Controlled Growth Explanatory Note [REP7-018]**, from the outset the intention of the **Green Controlled Growth Framework [REP7-020]** has been to provide a clear, legally-binding set of processes and procedures which must be followed and measurable Thresholds and Limits at which defined actions must be taken. Through these processes and system of Thresholds and Limits, the GCG Framework will be self-enforcing in respect of mitigating environmental effects above Limits, with the process designed to require action by the airport operator both to take early action with the intention of avoiding an

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			exceedance of a Limit, and in the unlikely event that this occurs, to address this exceedance as soon as is reasonably practicable. The focus of the GCG Framework is therefore on avoiding breaches in the first instance and addressing any breach, should it occur, as soon as is reasonably practicable. The GCG Framework is intended to enable and encourage sustainable growth permitted under the Development Consent Order with robust systems to support this rather than being a system simply designed as a punitive measure for breaches of a Limit. This approach is secured through the requirement to consult the Environmental Scrutiny Group (ESG) and seek their approval of a Mitigation Plan, meaning that any mitigation brought forward will be agreed by the airport operator, local authorities and independent experts to be the most appropriate way of mitigating the relevant impact. For there to be a continued breach, this would mean that not only would the early action secured by the GCG Framework at a Level 1 and Level 2 Threshold have been unsuccessful, but the Mitigation Plan agreed with and approved by the ESG would also need to have been unsuccessful. This is considered to be an unlikely scenario, and it is unclear how the prospect of an additional sanction would mean that an environmental impact would be addressed and reduced below the Limit any sooner than via the

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			proposed GCG process, which is what all parties are agreed is the required outcome. Any continued breach of Limits that is caused by the airport operator not taking action as required by the GCG Framework (including the requirement to prepare, agree and implement a Mitigation Plan) would be a breach of the DCO and would be enforceable under the Planning Act 2008. This approach as currently set out is considered to be a significant enhancement when compared to the historic approach to securing binary planning conditions *('impact X shall not exceed Y')* as it provides early warnings and action to prevent Limits from being exceeded as well as transparency around when a Limit has been exceeded, what actions are being taken by the airport operator to mitigate impacts where these exceed Limits, and the timescales over which these actions are planned to take effect, all supported by independent expert analysis and agreed by multiple local authorities, none of which are secured by traditional planning conditions or obligations. On this basis, it is not considered that a sanction for the breach of a Limit is necessary to make the Proposed Development acceptable in planning terms. Notwithstanding this, the GCG Framework also already includes an explicit link between

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			environmental Limits and commercial benefit. If a Limit is exceeded, the airport will not be able to grow. Any such constraint on airport growth by itself means there is an implicit (and significant) financial impact associated with the breach of a Limit. By contrast, the Applicant is not aware of any other airport Noise Envelope that has financial implications (either implicit or explicit) associated with a breach. The proposal is therefore entirely unprecedented and puts Luton Airport in a disadvantageous position despite the Applicant have taking significant and pro-active steps in proposing the GCG Framework. The Applicant has significant concerns that the proposed drafting would leave the airport operator liable for potentially unlimited financial penalties in the event of a breach of what is an environmental control regime that has been put forward voluntarily, which would be a sanction well beyond any that could be applied under any existing planning regime. This approach appears to penalise the Applicant for proposing a more ambitious approach to management of environmental impacts. The Applicant notes that the appropriate enforcement regime for DCOs under the Planning Act 2008 was set out by Parliament, and this seeks to go well above and beyond those proposals. The Applicant does not consider financial penalties in circumstances where robust controls have been put

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			in place meets the test of necessity or being required in connection with the authorised development under section 120. The Applicant further notes that the PPG is clear that *"Conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness."* The PPG also sets out that in general *"No payment of money or other consideration can be positively required when granting planning permission."* The potential for unlimited and unparticularised penalties, in the Applicant's view, fails this test. The Applicant is aware of no airport which is subject to such financial penalties in the UK (and the attempt to include such a regime was rejected in the P19 planning permission granted by the Secretary of State). The Applicant would also note that the GCG Framework has been designed around a process of annual monitoring and reporting. Impacts are measured over periods of time (either the 92-day summertime period for noise, or annually in other areas) and reported each year. As such any action taken after 12 months would not be action taken to address a prolonged or repeated breach. The annual GCG process means that 12 months is the minimum time period that would be required to determine whether a Mitigation Plan has been effective, and GCG allows for Mitigation Plans to be effective over longer time periods if all parties agree that this is the most appropriate way of mitigating an

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			impact. It would also not be possible to determine on a daily basis whether the airport remained in breach of a Limit as the impacts controlled by the GCG Framework cannot be measured in this way. Without prejudice to the position set out above, the Applicant wishes to consider whether an alternative penalty or sanction would be appropriate, and if this is the case it will submit this alternative at Deadline 9.
24(1)	1 **(a)**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.	To ensure that the GCG Framework remains up to date in respect of rapidly evolving policy on greenhouse gas emissions.	Whilst the Applicant acknowledges the reasons provided by the ExA for the drafting changes, it would request further clarity on what the ExA seeks to secure through the proposed changes. If the intention is to secure 'actions' (for example, revised approaches to managing GHG emissions or installation of new low carbon infrastructure) pursuant to future policy changes, it should be noted that a requirement to do so is already included within Section 4.5 of the **Outline Greenhouse Gas Action Plan [APP-081]** and would be carried forward into any Greenhouse Gas Action Plans produced under Requirement 23 of the **Draft DCO [TR020001/APP/2.01]**. It is not considered necessary or appropriate to duplicate this requirement in Green Controlled Growth, which is concerned with ensuring that measured greenhouse gas emissions remain within Limits. If the intention is to secure amendments to GCG Thresholds or Limits that reflect future changes to

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	(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.		policy, the Applicant is concerned that the proposed drafting could be interpreted as an absolute requirement to do so *('ensure that the development is compliant')*. As outlined in Section 5.3 of the A**pplicant's Post-Hearing Submission for Issue Specific Hearing 9 [REP6-067],** such a requirement (a proposed 'Condition 15') was considered as part of the Stansted planning inquiry and was described by the Planning Inspector as part of their decision on costs as *'clearly unlawful and fails to meet the tests contained in the National Planning Policy Framework'* as there is no policy basis for seeking to reassess carbon emissions in light of any potential change of policy that might occur in the future and such a requirement would be likely to seriously undermine the certainty that a planning permission should provide that the development could be fully implemented. If the intent of the drafting is to ensure that consideration is given to future policy on greenhouse gas emissions as part of the periodic GCG review process, the Applicant would suggest that this is secured in a way that is consistent with the similar requirement pertaining to air quality reviews, for example through a new paragraph 5.4.5 in the Green Controlled Growth Framework as follows, with the following paragraph being renumbered: *'As part of the periodic GCG review process set out in paragraph 24(3) of Schedule 2 to the Draft DCO*

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			[TR020001/APP/2.01], consideration should be given to the appropriateness and practicality of revising the Greenhouse Gases Limits and Thresholds to align with current greenhouse gas policies; however, there will be no absolute requirement to do so.'
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.**~~	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.	The Applicant refers to its response provided in respect of paragraph 23(7) and (8) above. For the reasons explained in that response, the Applicant does not accept the case for this proposed amendment.
26	**Night quota period scheduled movements cap** **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.** **Air noise management plan** **(1)** From the date that notice is served in accordance with article	The ExA considers that for the purposes of precision, enforceability and clarity, the scheduled night quota period movements cap needs to be on the face of the Order. The ExA considers that the Air Noise Management Plan should be retained as it provides important detail regarding the control processes.	The Applicant notes that a number of proposed amendments, and proposed Requirements, seek to transpose elements of the controls contained in the **Air Noise Management Plan [REP7-044]** onto the 'face' of the draft DCO. The ExA states that this is necessary *"for the purposes of precision, enforceability and clarity".* In general terms, the Applicant does not agree. The controls are secured under the Applicant's proposed Requirement 26. The terms of that Requirement are clear that the airport must be operated in accordance with the air noise management plan.

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	44(1) (interaction with LLAOL planning permission) of this Order, the airport must be operated in accordance with the air noise management plan. **(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).** **(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.** **(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**	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. Requirements following this in the draft DCO would need to be re-numbered.	Any action taken in a way which would conflict with those controls would be capable of being subject to enforcement action, and the presence of the control on the face of the Order rather than in a document secured under the DCO does not affect that principle. The Applicant notes that this principle is carried through a number of control documents (e.g., the Code of Construction Practice). The Applicant considers that this heavily precedented mechanism of securing documents is both precise and clear noting that the number of considerations, and processes, lend themselves to be included in a control document, rather than in statutory drafting. The Applicant notes that transposing selective controls in this manner runs the risk of not including all elements of the process which is secured and set out in the **Air Noise Management Plan [REP7-044]**, and separately, in the absence of an amendment of the Air Noise Management Plan, creates uncertainty and confusion about which provision requires and secures the relevant measures. In relation to the specific drafting suggested, and without prejudice to the position that the Night Quota Period movement limit should not be on the face of the DCO, the Applicant notes that dispensations should be allowed for as set out in Section 2.6 of the **Air Noise Management Plan [REP7-044]**. The

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	operation of authorised development within the Limit.		Applicant also notes that *"a substantial change in operational conditions"* is unclear without a definition of what such a "*substantial change*" would be and conflicts with the ExA's intention to increase clarity. The Applicant notes that the **Air Noise Management Plan [REP7-044]** already requires a review to be undertaken every five years, and will update the Air Noise Management Plan at Deadline 9 to also require that the first review must take place no later than 3 years from the date the notice is served under article 44 (paragraph 2 of the ExA's recommendations), and to incorporate the language in paragraph 4 of the ExA's recommendations. Finally, the Applicant notes that the P19 planning permission includes a noise management plan, from which the relevant controls were mapped across into the **Air Noise Management Plan [REP7-044]**. The P19 management plan was secured in the same way as the Air Noise Management Plan – i.e. via a plan, not on the face of the permission – and that plan is capable of future revision under the P19 permission by the local planning authority. This consented principle is exactly the same as that proposed in the Draft DCO, and which the Applicant believes to be justifiable and necessary. The **Air Noise Management Plan [REP7-044]** is capable of revision under paragraph 2 of Schedule 2, which is important given the potential for future changes to

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			e.g. the Quota Count management system. This is precisely why the Air Noise Management Plan controls should not be secured on the face of the DCO, as that will render them far more difficult to evolve and adapt.
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~~ **Luton Borough Council,** following consultation with the **specified authorities, Buckinghamshire Council and** the relevant highway authority ~~**on matters related to its function**~~.	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. The ExA considers that the use of the phrase 'on matters related to their function' is unnecessary.	The Applicant agrees with and welcomes this change, save that the Applicant does not consider it necessary to list the *"relevant highway authority*" – instead that Applicant has expressly listed National Highways as a consultee. Local highway authorities are already covered by the obligation to consult the "specified authorities".

Ref	ExA's recommended amendment/insertion	Reasons and notes	The Applicant's response
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 consultation with the relevant highway authority ~~**on matters related to its function**~~.	The ExA considers the drafting to be unnecessary.	The Applicant confirms that this amendment has been made in the draft DCO submitted for Deadline 8. The Applicant has also made a further change sub-paragraph (3), to flip the approval body to be the relevant highway authority. This aligns with the TRIMMA process. Reference to consultation with the other bodies (e.g. the local planning authority) is not necessary here as that process is dealt with under requirement 6 ("detailed design") and Part 5 of Schedule 2.
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~~ **Luton Borough Council,** following consultation	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	The Applicant agrees with and welcomes these changes, save that the Applicant does not consider it necessary to list the "*relevant highway authority*" – instead that Applicant has expressly listed National Highways as a consultee. Local highway authorities are already covered by the obligation to consult the *"specified authorities"*.

Ref	ExA's recommended amendment/insertion	Reasons and notes	The Applicant's response
	with the **specified authorities, Buckinghamshire Council and** the relevant highway authority ~~on matters related to its function~~.	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 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 ~~**on matters related to its function**~~.	The ExA considers the drafting to be unnecessary	The Applicant agrees with and welcomes these changes, save that it has carried across the same amendments as made to sub-paragraph (1).
35(1)	(1) Where an application has been made to the discharging authority for any consent, agreement or approval referred to in Part 1, Part 2 or Part 4 of this Schedule the discharging authority— (a) ~~may~~ **must** consult a discretionary consultee where it appears to the discharging	The proposed changes implement the recommendations of the Environment Agency [EV17-002]. These would ensure that the appropriate consultees are consulted when discharging requirements and that the specified period cannot begin	The Applicant confirms that the amendment to (1)(a) has been made in the draft DCO submitted for Deadline 8. In view of this change to "must" instead of "may" (i.e. no longer "discretionary") the Applicant has re-inserted "…necessary and appropriate…", which was omitted from the Deadline 7 version of the **Draft DCO [REP7-003]**.

Ref	ExA's recommended amendment/insertion	Reasons and notes	The Applicant's response
	authority, acting reasonably, that such consultation is appropriate having regard to— (i) the nature and spatial extent of the consent, agreement or approval being sought; and (ii) the functions of the discretionary consultee; (b) must give notice to the undertaker of the decision on the application within the specified period which begins on— (i) the day immediately following that on which the application is ~~received~~ **deemed valid** by the discharging authority; or (ii) the day immediately following that on which **valid** 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).	until the submitted reports are deemed valid.	The Applicant disagrees that there is a need for an application to be "deemed valid". This is unnecessary, because if the discharging authority requires further information for an application to be considered properly, it can request this under paragraph 37 of Schedule 2 and the 'clock' re-starts again for the approval period once that information has been satisfactorily received.
35 (2)/ (3)	**(3) In determining any application made to the discharging authority for any consent, agreement or approval required by a**	To provide clarity as to what a discharging authority can do with an application. There is precedent for such drafting on	The Applicant has accepted a modified version of (c), but considers (a) is not necessary and strongly disagrees with the provision under (b) that would allow conditions to be imposed.

Ref	ExA's recommended amendment/insertion	Reasons and notes	The Applicant's response
	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.**	the made orders for Hornsea 4 Offshore Windfarm and Manston Airport	The Applicant's proposal has been through a rigorous examination process which has included refinement of, and substantial addition to, a comprehensive body of Requirements (i.e. the equivalent of planning conditions). The length of and detail within this response document is testament to that process. If approval is obtained for the DCO application, it would be disproportionate to allow discharging authorities to add new "conditions" which will have completely circumvented examination under the DCO process, and could serve to frustrate delivery of a scheme for which the Secretary of State had granted consent, having regard to the raft of "conditions" already included in Schedule 2.
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).,~~ **the undertaker may lodge an appeal for non determination under paragraph**	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	The Applicant does not agree with this amendment and has retained "deemed approval" in its version of the draft DCO submitted at Deadline 8. Such provisions are well-precedented and justified in the delivery of nationally significant infrastructure, where there is a public benefit in the efficient delivery of that infrastructure. The provision prevents approving bodies from frustrating the delivery of a project by simply failing to issue any decision. It is reasonable to include a mechanism the encourages active decision-making – the provision does not prevent an approving body

Ref	ExA's recommended amendment/insertion	Reasons and notes	The Applicant's response
	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.	when discharging a planning condition. 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.	from refusing an application, but at least in those circumstances the Applicant would be in receipt of reasons with which to act upon.
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~~ **the date any application is rejected as being invalid by the discharging authority**; 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.	The Applicant disagrees that there is a need for an application to be "deemed valid" or otherwise. This is unnecessary, because if the discharging authority requires further information for an application to be considered properly, it can request this under paragraph 37 of Schedule 2 and the 'clock' re-starts again for the approval period once that information has been satisfactorily received.
36(3)	(3) If the paragraph concerned specifies that consultation with a consultee is required, or the	The point from which the timescale for consultees to respond is clarified in response	The Applicant does not agree with the proposed amendments suggested by the Examining Authority.

Ref	ExA's recommended amendment/insertion	Reasons and notes	The Applicant's response
	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) ~~ten~~ **fifteen** business days **from the date on which the views of consultees are sought**, for an application under paragraph 5 of this Schedule for detailed design approval of Works Nos. 3b(01), 3b(02), 3f and 4a; and (ii) ~~five~~ **ten** business days **from the date on which the views of consultees are sought** for any other application under Part 1, Part 2 or Part 4 of this Schedule; and (c) notify the undertaker in writing specifying any further information reasonably requested	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.	The timescales set out in sub-paragraph 36 are fair, reasonable and appropriate in the context that the proposal would already have obtained DCO approval, and given the reasonable desire of the Applicant to balance the interests of others with its reasonable desire to proportionately set some limits over the time taken to discharge requirements. This provision is not prescribing a consultation period, it is merely allowing a period time within which a consultee is to notify the discharging authority whether they require further information. In this context, the timescales are reasonable.

Ref	ExA's recommended amendment/insertion	Reasons and notes	The Applicant's response
	by the discharging authority or any consultee (as the case may be) within— (i) ~~20~~ **twenty five** business days of receipt of **a** ~~a~~ an application under paragraph 5 of this Schedule for detailed design approval of Works Nos. 3b(01), 3b(02), 3f and 4a; and (ii) ~~15~~ **twenty** business days of receipt of any other application under Part 1, Part 2 or Part 4 of this Schedule.		

Table 2-2 Applicant's response to ExA's commentary on the Draft DCO – new Requirements

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
1	**Water consumption** (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. (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.	To manage water consumption for the Proposed Development in the absence of protective provisions and/ or a side agreement for Affinity Water.	The Applicant notes that the additional Requirement is proposed in the event that agreement is not reached with Affinity Water on a form of side agreement and protective provisions. However, based on the progress of negotiations to date and the significant modifications already made to the Requirements, the **Code of Construction Practice [TR020001/APP/5.02]** and the **Design Principles [TR020001/APP/7.09]** for Affinity Water's benefit, the Applicant fully anticipates reaching agreement with Affinity Water on a form of side agreement and protective provisions, sufficient to address its concerns, before the end of the Examination, such that this additional Requirement would be unnecessary. It is also the Applicant's view that the additional Requirement would be unnecessary in any event. The intended effect of paragraph (1) of the proposed additional Requirement, namely to manage the consumption of water to an agreed baseline, is already substantively addressed through Design Principle SUS.15 which states: *"Detailed design will include such water efficiency measures as are necessary, so far as reasonably practicable, to maintain*

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
			water demand (excluding construction water demand) at the 2019 consumption baseline. Rainwater harvesting and greywater re-use solutions will be incorporated in detailed designs. Potable water efficiency measures will also be incorporated in the design of buildings, in order to minimise potable water demand from the statutory undertaker." *"'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 outlined in the Water Cycle Strategy (Appendix 20.5 of the ES [REP4-033])."* The Design Principles document is, in turn, secured by the draft DCO. The Code of Construction Practice contains further provisions controlling water consumption during the construction phase, in particular, para. 17.6.7: *"As part of the water use profiling exercise, the lead contractor will liaise with Affinity Water Ltd. The volumes of water used will*

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
			be agreed with Affinity Water Ltd and monitored." The Applicant further considers that paragraph (2) is more satisfactorily addressed by existing Design Principle DDS.10 than the proposed paragraph (2). DDS.10 provides that the monitoring of water consumption during operation in agreement with Affinity Water, rather than the submission of a report to the relevant planning authority in consultation with Affinity Water. DDS.10 states: *"The detailed design will include specification of operation and maintenance of drainage forming part of the Proposed Development, including the monitoring of water consumption during operation in agreement with Affinity Water as the regulatory local water supplier."* The Applicant will continue to discuss water consumption issues with Affinity Water to ensure its concerns are met either through the DCO and secured documents or through the side agreement and protective provisions
2	**Phases of Authorised Development** (1) The authorised development must not commence until a written scheme setting out the phases of construction for the	At various points throughout the Examination the ExA	The Applicant has incorporated a phasing requirement in the Deadline 8 version of the Draft DCO as requested by the ExA, but has made

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
	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. (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. (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 every three years thereafter until the authorised development is completed. (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.	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	some adaptations to ensure the Applicant has reasonable and proportionate flexibility to deliver the authorised development in "parts" which may be increments of a phase shown in the scheme layout plans. Commenting on the specific paragraphs in turn: (1) and (4): The Applicant strongly disagrees that the phasing scheme should be subject to consultation and approval. The DCO application proposes phased growth and contains scheme layout plans which show how that growth would be realised, along with forecasts and assessments to demonstrate when and how that growth would come forward. If the DCO application is granted development consent, then the phased growth proposed by the application has been accepted by the Secretary of State and should not be "re-litigated" under a requirement. Thus a phasing plan under a requirement should be an "informative" document, not a document for consultation and approval. In this respect the Applicant's proposal has precedent in requirement 3 of the Southampton to London Pipeline DCO scheme, a similar large, phased development. The Applicant emphasises, in relation to the ExA's comment about ensuring that *"the necessary mitigation would be in place to ensure compliance with the ES"*, that requirement 6 already contains a provision to the effect that detailed design applications must not give rise to

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
	(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).	has included drafting to enable the scheme to be reviewed and amended at appropriate points within the project timetable.	any materially new or materially different environmental effects in comparison with those reported in the Environmental Statement. Detailed design is subject to local planning / highway authority approval already, so it is not necessary or proportionate to include a further approval process in relation to phasing, which would duplicate requirement 6. (2) The Applicant has added a caveat to this paragraph, to the effect that a phasing plan must not prevent the incremental delivery of parts / stages of the authorised development within the phases. nor require the delivery of a part within in a specific phase, provided in either case that this does not give rise to any materially new or materially different environmental effects in comparison with those reported in the Environmental Statement. That addresses the ExA's concern about necessary mitigation, whilst maintaining essential delivery and commercial flexibility for the Applicant. (3) The Applicant maintains its position that five years is an acceptable review period, which is aligned with the airport master planning process under the Town and Country Planning Act 1990 regime. The Applicant emphasises that a five yearly review cycle was in fact recommended by the host authorities. (5) The Applicant is strongly resistant to this provision. The works sought by the DCO

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
			application are permissive, and will come forward in response to the demand that provides the commercial justification for them to be built. In this context, the Applicant cannot be under an obligation to carry out the overall phasing scheme. As noted above, the phasing scheme is an "informative" and is subject to update and change. The approval of works, and the obligation to deliver works in accordance with an approval, sits under requirement 6. Requirement 5 should not duplicate it. Finally, the Applicant's new phasing requirement contains a further sub-paragraph setting out, for precision and certainty, what a "written scheme" means.
3	**Lighting plan** (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.	The ExA notes the comments from the Applicant [REP5-052, page 24]. Given the number of concerns raised in 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	The Applicant fully accepts the principle of these amendments, but proposes a different way to secure them which aligns better with the existing Requirements in Schedule 2, rather than creating a new standalone Requirement. This will allow for a more efficient and streamlined discharge of Requirements, avoiding duplication and potential confusion. Construction lighting (sub-paragraphs (1) and (2)) is addressed by the CoCP, so the Applicant has added a *"construction lighting plan"* as a new obligation under Requirement 8. This substantively replicates the effect of the ExA's proposed drafting, and ensures that the lighting

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
	(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. (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 approved in writing by Luton Borough Council in consultation with the specified authorities. (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. (5) The operational lighting must be installed and thereafter operated in accordance with the scheme approved under sub-paragraph (3).	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. 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.	plan will contain all the relevant measures already included in the CoCP. Operational lighting has been added to the detailed design Requirement (now Requirement 6) as a new sub-paragraph under (2). It is noted that sub-paragraph (2) excludes highway works, but approval for highway lighting is comprehensively dealt with under new paragraph (3) of Requirement 6.

<table>
<tr><th>Reference</th><th>ExA's Proposed Drafting</th><th>Reason</th><th>The Applicant's Response</th></tr>
<tr>
<td>4</td>
<td>Noise contour limits and quota count point limits
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.

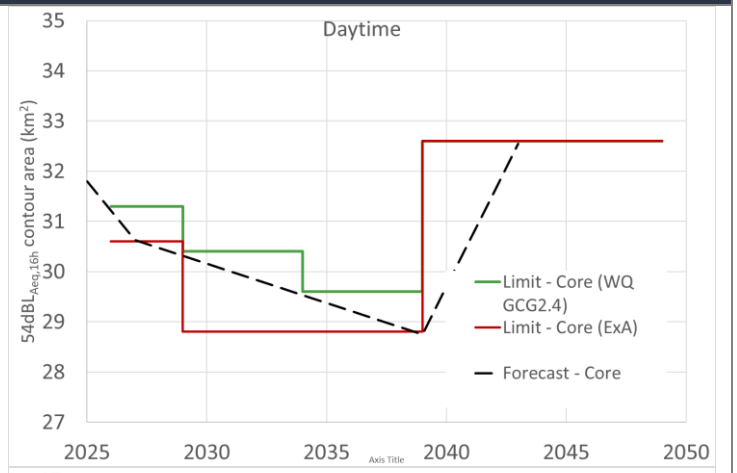
Table x: DCO noise contour thresholds and limits
<table>
<tr><th>Limit</th><th>Up to 2028</th><th>2029 – 2033</th><th>2034 – 2038</th><th>2039 - 2043*</th><th>2044 onwards (in 5 year cycles)*</th></tr>
<tr><td>Average summer day-time noise levels, as measured by size (km2) of 54 dB $L_{Aeq,16hr}$ noise 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$L_{Aeq,8hr}$ 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>
</table>

The contour area limit values shall be converted to day and night quota count budgets, supported by threshold value day and night quota count budgets as set out in the GCG framework, using a regression analysis approach to be agreed with Luton</td>
<td>The ExA considers that for the purposes of precision, enforceability and clarity, noise contour limits need to be on the face of the Order.

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.

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]</td>
<td>The Applicant maintains its position that the Limits in Green Controlled Growth process, secured by the DCO, ensures that the noise outcomes are no worse than those identified in the Environmental Statement and will respond further on this particular recommendation at Deadline 9.

Without prejudice to this position, the Applicant notes that the ExA has suggested alternative limits to those provided by the Applicant in response to Written Question GCG2.4 in the period up to 2028 [REP7-054]. These alternative limits are not compatible with the growth sought by the DCO, even for the Core case forecast. This is because the Limits have been set based on individual peak years in each assessment phase without considering the interpolation between these years. Additionally, as the ExA notes, the 2029 – 2033 Limit has been copied across from the 2034 – 2038 Limit without consideration of the Core case forecast in these years. The implications of this are shown in the figures below which shows that the airport would be in breach of the ExA's proposed daytime and night-time Limits in nearly every year up until 2040.</td>
</tr>
</table>

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
	Borough Council in consultation with the councils listed in requirement 19(2). 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.	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. 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	

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
		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.	
5	**Restrictions on aircraft quota count** (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: (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; (b) an aircraft delayed in taking off or landing as a result of widespread and prolonged disruption of air traffic; (c) an aircraft taking off or landing in an emergency consisting of an immediate danger to life or health, whether human or animal; (d) take-off or landing of any light propeller-driven aircraft with a maximum certificated take-off weight not exceeding	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.	The Applicant's in principle objection to transposing controls from the **Air Noise Management Plan [REP7-044]** is set out in relation to paragraph 26 of Schedule 2 above. In relation to the specific amendments suggested here, the Applicant notes that the list of exemptions does not align, and is wider, than the dispensations in Section 2.6 of the **Air Noise Management Plan** submitted at Deadline 7 **[REP7-044]** which were specifically chosen to align with the relevant DfT guidance. The Applicant notes that transposing selective controls in this manner runs the risk of not including all elements of the process which is secured and set out in the Air Noise Management Plan, and separately, in the absence of an amendment of the Air Noise Management Plan, creates uncertainty and confusion about which

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
	8,618kg, and which is being utilised to undertake essential airport safety checks; (e) flights operated by relief organisations for humanitarian reasons; (f) flights operated by the armed forces for military purposes; or (g) a particular occasion or series of occasions which are to be disregarded pursuant to a notice published by the Secretary of 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. (2) Unless the circumstances in paragraph (1) apply, an aircraft may not take-off or be scheduled to land during the night period where: (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 (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.		provision requires and secures the relevant measures. Inclusion of these measures on the 'face' of the DCO also removes the proportionate flexibility provided by a management plan, which is capable of being amended under paragraph 2 of Schedule 2 to reflect potential changes to e.g. Quota Count systems in the long term. The Applicant is merely seeking to repeat the same principle that has been accepted for noise management plans under the consented P19 scheme.

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
	(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.		
6	**Annual air traffic movement (ATM) cap for the authorised development** 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.	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. 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	As set out in response to Written Questions NO.2.5 and NO.2.6 **[REP7-056]**, the Applicant's position remains that movement limits are not an effective control in limiting noise generation, noise exposure and noise impacts, a view which shared by the Civil Aviation Authority (Ref 1). The Applicant notes again that the robust and comprehensive combination of noise controls in the **Air Noise Management Plan [REP7-044]** (which already includes a movement limit in the 23:30 – 06:00 period) and the night-time noise contour area limits in the **Green Controlled Growth Framework [REP7-020]** mean that the adverse effects of aircraft noise are fully controlled and limited to the effects reported in **Chapter 16 of the ES [REP1-003]**. The Applicant's view is therefore that the additional controls of annual and shoulder period movement limits are not necessary or appropriate. The Applicant further notes that there is no 23:00 – 23:30 movement limit in the current planning permission controls, and notes that the Host Authorities are not seeking such a limit in the list

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
		authorities (Central Bedfordshire Council, Joint Authorities and LBC eg [REP7-084], [REP7-087] and [REP7-090]) on the basis that this number of movements has informed the Applicant's assessment of effects in the ES. 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.	of additionally sought controls in the SoCG to be submitted at Deadline 9. Such a limit, if imposed, could have the unintended consequence of pushing more movements into the 23:30 – 06:00 period in instances where the 9,650 annual movement limit in this period has not been used up. The Applicant therefore strongly opposes a movement limit being imposed in the 23:00 – 23:30 period. Without prejudice to the above position, the Applicant maintains its position that any total annual movement limit should not be less than 225,000 and any annual movement limit for the 06:00 – 07:00 period should not be less than 13,000 in order to ensure that the economic benefits of growth can be realised in circumstances where there is a variance in the fleet mix. Noise would remain controlled by the overarching Limits. The Applicant is continuing to undertake technical work to determine whether it is viable for the limits to be lowered whilst still allowing the growth sought by the DCO to be realised without undue constraint and will respond further at Deadline 9.
7	**Noise insulation policy** 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	In the absence of a secured commitment in a section (s)106 agreement or unilateral undertaking this requirement would	The Applicant expects to reach agreement with the Host Authorities on the terms of the s106 agreement before the end of the Examination, so expects that there will be no need for such a requirement to be added to the draft DCO.

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
	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.	secure the noise insulation mitigation/ compensation approach proposed by the Applicant.	If such agreement is not reached, then the commitment will either be secured in the unilateral undertaking that the Applicant will submit to the Examination or in a DCO requirement (either of which would be submitted at Deadline 9 or 10 as appropriate).
8	**Noise insulation plan and programme** (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. (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. (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.	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. 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	The Applicant accepts the broad principle of this provision, subject to some drafting amendments which are under review. The Applicant is also exploring the best "home" for this commitment and considers it may sit best either alongside the commitment in the draft section 106 agreement which secures the **Compensation Policies, Measures and Community First [REP7-036]** document, or alternatively within that document itself. The Applicant will provide an update on this matter at Deadline 9.

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
	(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.	appropriate scrutiny of the delivery programme is required.	
9	**Noise violation limits** (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. (2) The Departure Noise Violation Limits until 1 January 2028 will be: (i) 80dBL_{AMax} during the daytime (07:00 – 23:00); and (ii) 79dBL_{Amax} during the night-time (23:00 – 07:00). (3) On the 1 January 2028 the daytime and night-time Departure Noise Violation Limits will be reduced to 77dBL_{Amax} and 77dBL_{Amax} respectively.	The ExA considers that for the purposes of precision, enforceability and clarity noise violation limits need to be on the face of the Order. 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.	The Applicant's in principle objection to transposing controls from the **Air Noise Management Plan [REP7-044]** is set out in relation to paragraph 26 of Schedule 2 above. In relation to the specific amendments suggested here, the Applicant notes that having this drafting on the 'face' of the Order limits the ability for aspects of the Noise Violation Limits other than their numerical value to be amended, for example following an airspace change where the position of the permanent noise monitors may need to change due to a change in flightpaths. The Applicant notes that transposing selective controls in this manner runs the risk of not including all elements of the process which is secured and set out in the Air Noise Management Plan, and separately, in the absence of an amendment of the Air Noise Management Plan, creates uncertainty and confusion about which provision requires and secures the relevant measures.

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
	(4) Noise violations shall be managed in accordance with the procedures set out in the Air Noise Management Plan. (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.		The Applicant will update the **Air Noise Management Plan [REP7-044]** at Deadline 9 to incorporate the language suggested in (5) as part of the five yearly review, though will replace ESG with the LBC in line with other review aspects of the Air Noise Management Plan and because ESG's role is in relation to Green Controlled Growth and not the separate limits in the Air Noise Management Plan.
10	**Track violation** A track keeping system shall be maintained by the airport. Track violation and track violation penalties shall be managed in accordance with the procedures set out in the air noise management plan.	The ExA considers that for the purposes of precision, enforceability and clarity track violations needs to be on the face of the Order.	The Applicant's in principle objection to transposing controls from the **Air Noise Management Plan [REP7-044]** is set out in relation to paragraph 26 of Schedule 2 above. The Applicant notes that transposing selective controls in this manner runs the risk of not including all elements of the process which is secured and set out in the Air Noise Management Plan, and separately, in the absence of an amendment of the Air Noise Management Plan, creates uncertainty and confusion about which provision requires and secures the relevant measures. Inclusion of these measures on the 'face' of the DCO also removes the proportionate flexibility provided by a management plan, which is capable of being amended under paragraph 2 of Schedule 2 to reflect potential changes to e.g. Quota Count systems in the long term. The

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
			Applicant is merely seeking to repeat the same principle that has been accepted for noise management plans under the consented P19 scheme.
11	**Air Quality Monitoring Plan** 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).	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.	The mechanism for approval of Appendix D of the GCG Framework is the same as for the other parts of the Framework, as a certified document through the DCO. It can be reviewed and amended where agreed through the process set out at Requirement 24(3) of the **Draft DCO [TR020001/APP/2.01].** As reflected in the **Applicant's response to Deadline 7 Submissions [TR020001/APP/8.175]** and the updated Statements of Common Ground to be submitted at Deadline 9, it is not considered that there are any outstanding issues regarding the location, monitoring standards, calibration and reporting process for air quality monitoring. The Applicant has submitted its position on the requirement to prescribe a system of ANPR in response to Written Question GCG.2.10 **[REP7-054]**. Notwithstanding this, the Applicant would also note that Luton Borough Council, who under the proposed drafting would be responsible for approving any such plan, have also confirmed in their response to the same Written Question **[REP7-090]** that they do not consider such a requirement necessary.

Reference	ExA's Proposed Drafting	Reason	The Applicant's Response
12	**Employment and training strategy** (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.	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.	The Applicant expects to reach agreement with the Host Authorities on the terms of the s106 agreement before the end of the Examination, so expects there will be no need for such a requirement to be added to the draft DCO. If such agreement is not reached, then the commitment will either be secured in the unilateral undertaking that the Applicant will submit to the Examination or in a DCO requirement (either of which would be submitted at Deadline 9 or 10 as appropriate).

Table 2-3 Applicant's response to ExA's commentary on the Draft DCO – Schedule 7

ExA's Proposed Change			Reason	The Applicant's Response
~~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)~~	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.	For the reasons set out earlier in this document in relation to the ExA's Schedule 1 recommended changes, the Applicant strongly disagrees with the removal of these works.
~~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)~~		As above.
~~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, 3-28, 3-29~~	~~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)~~		As above.
~~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)~~		As above.

Table 2-4 Applicant's response to ExA's commentary on the Draft DCO – Schedule 9

ExA's Proposed Additional Document	Reason	The Applicant's Response
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.	This document has been added to Schedule 9 in the Deadline 8 version of the draft DCO.
Water Cycle Strategy [REP4-033]	Add to certified documents to support the new water resource requirement.	The Applicant disagrees with the ExA's water resource requirement for the reasons set out earlier in this document, and so the Water Cycle Strategy has not been added to Schedule 9.

Table 2-5 Applicant's response to ExA's commentary on the Draft DCO – new schedules

ExA's Proposed Addition	Reason	The Applicant's Response
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.	The Applicant disagrees with the ExA's proposed inclusion of arbitration rules for the reasons set out earlier in this document, and so no new schedule has been included.
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.	The Applicant disagrees with the ExA's proposed inclusion of the design review process in the DCO for the reasons set out earlier in this document, and so no new schedule has been included.

REFERENCES

Ref 1 Civil Aviation Authority (2019), CAP1731 Aviation Strategy – Noise Forecast and Analyses