

January 2024

# London Luton Airport Expansion

Planning Inspectorate Scheme Ref: TR020001

Volume 8 Additional Submissions (Examination)

## **8.185 Alternative Mechanisms to the Section 106 Agreement**

Infrastructure Planning (Examination Procedure) Rules 2010

Application Document Ref: TR020001/APP/8.185

**The Planning Act 2008**

**The Infrastructure Planning (Examination Procedure) Rules 2010**

**London Luton Airport Expansion Development Consent  
Order 202x**

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**8.185 ALTERNATIVE MECHANISMS TO THE SECTION 106  
AGREEMENT**

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<b>Deadline:</b>	Deadline 9
<b>Planning Inspectorate Scheme Reference:</b>	TR020001
<b>Document Reference:</b>	TR020001/APP/8.185
<b>Author:</b>	Luton Rising

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## INTRODUCTION

- 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). This document provides further details of the alternative mechanisms to the section 106 agreement. Although referred to as a "section 106 agreement" the agreement being negotiated is also made under other legislation. This is common practice where some elements of the agreement do not or may not fall within the scope of section 106 of the Town and Country Planning Act 1990
- 1.1.2 In the Applicant's **Deadline 7 Cover Letter [REP7-001]**, the Applicant acknowledged that it may not be possible to reach an agreement with all parties on the agreement by Deadline 9 and set out the possible alternatives to an agreement if it is not agreed by the end of the examination, as requested by the ExA in their Rule 17 letter dated 3 January 2024 **[PD-017]**.
- 1.1.3 A **Draft Section 106 Agreement [TR020001/APP/8.167]** has been submitted at Deadline 9 (30 January 2024). The Applicant is continuing to try and settle the section 106 agreement with the relevant local authorities and with negotiations well advanced, hopes to submit a final signed version at Deadline 11 as requested in the ExA's Rule 8 letter issued 26 January 2024 **[PD-022]**. Obviously, this cannot be guaranteed since it depends upon all parties being willing and able to sign it in the time remaining.
- 1.1.4 At Deadline 9, the Applicant has submitted drafts of the alternative options which are signposted in Table 1.1. A draft unilateral undertaking is provided in **Appendix A**.

Table 0.1: Alternative mechanisms for the section 106 obligations

Schedule	Detail	Applicant's Alternative
Schedule 1 – Land Interests	This schedule is simply to record the land interests of the Applicant and airport operator (LLAOL).	This schedule would be replicated in a unilateral undertaking. See Schedule 1 of the draft unilateral undertaking provided in <b>Appendix A</b> .
Schedule 2 – Re Provision of Sports Pitches	This schedule requires the Applicant to make a payment to Luton Borough Council for the re-provision of sports pitches in certain locations.	In the absence of a section 106 agreement, a unilateral obligation would be given by the Applicant to LBC for payment of the Sports Pitch and Changing Room Re-provision Contribution. See Schedule 2 of the draft unilateral undertaking provided in <b>Appendix A</b> .
Schedule 3 – Future Management of Wigmore Valley Park	This schedule requires the establishment of a community trust to manage and take ownership of Wigmore Valley Park in its re-constituted form (i.e. with part taken for the airport development and some added as “replacement land” under the DCO). The schedule also provides for the payment by the Applicant of £250,000 pa to the Community Trust as the future owner and manager of the park.	<p>It would not be appropriate for these arrangements to be dealt with under a unilateral obligation as the annual payment is to be made to the Trust rather than to Luton Borough Council and the schedule also requires the Council or the Applicant, depending upon the circumstances prevailing at the time, to grant a long lease of its interest in the park (as re-constituted) to the Trust. An agreement with Luton Borough Council is needed to achieve this.</p> <p>If not in the form of a section 106 agreement, it would need to be dealt with under a side agreement between the parties. The agreement would be negotiated / completed after the close of the examination, noting that the community trust is not necessary to secure the obligations to deliver and manage the park, which already fall on the Applicant as a default. The substantive terms of the side agreement would be the same as Schedule 3 of the <b>Draft Section 106 Agreement [TR020001/APP/8.167]</b> submitted at Deadline 9.</p> <p>The intention would be for the parties to complete the agreement, and to provide confirmation to this effect to the Secretary of State, before the decision-making stage on the DCO application commences.</p>

Schedule	Detail	Applicant's Alternative
<p>Schedule 4 – Employment and Training Strategy (ETS)</p>	<p>This schedule requires the Applicant and the airport operator to adhere to the ETS, being a document that is before the ExA.</p>	<p>This could be covered by a requirement in the DCO. The Applicant notes the ExA’s proposed form of requirement in the <b>Examining Authority’s commentary on, or schedule of changes to the draft DCO [PD-018]</b>, at page 108.</p> <p>The Applicant is not proposing to adopt the ExA’s proposal, which requires a post-consent consultation and approval process. This is because the ETS is not an “outline” document – it is “final” as presented at the close of the examination.</p> <p>Hence the requirement merely requires a commitment (in line with the Schedule 4 wording) to implement the ETS.</p> <p>The ETS would be capable of amendment in future under paragraph 2 of Schedule 2 to the draft DCO.</p> <p>The Applicant’s proposed requirement to secure the ETS is as follows:</p> <p><b><i>Employment and training strategy</i></b>  <b><i>35. From the date that notice is served in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order, the authorised development must be carried out in accordance with the employment and training strategy.</i></b></p> <p>Consequential amendments to the DCO would be as follows:</p> <p>In paragraph 1 of Schedule 2: “<i>employment and training strategy</i>” means the document of that description referenced in Schedule 9 (documents to be certified) and certified by the Secretary of State.</p>

Schedule	Detail	Applicant's Alternative
		<p>In paragraph 2(1) of Schedule 2, new sub-paragraph (h) <i>employment and training strategy</i>. This would ensure that the strategy is capable of future amendment under the terms of paragraph 2(1).</p> <p>In Schedule 9, the <i>employment and training strategy (revision [1])</i> would be added to the table of certified documents.</p>
Schedule 5 – Green Controlled Growth Funding	This schedule provides for annual payments to be made to the relevant councils to meet their costs in participating in the ESG (Environmental Scrutiny Group) and the related “Technical Panels” to be established under requirement 20 of the DCO.	In the absence of a section 106 agreement, a unilateral obligation would be given by the Applicant to make the payments to those of the Councils to whom the obligations are given and who are ESG and Technical Panel members in respect of costs incurred in participating in the ESG and Technical Panels. See Schedule 3 of the draft unilateral undertaking provided in <b>Appendix A</b> .
Schedule 6 – Prospect House Day Nursery	This schedule requires the Applicant to commission an assessment of need to replace nursery capacity were the Prospect House Day Nursery need to close on account of the authorised development.	In the absence of a section 106 agreement, the Application would give a similar covenant in the form of a unilateral obligation. See Schedule 4 of the draft unilateral undertaking provided in <b>Appendix A</b> .
Schedule 7 – Compensation Policies, Measures and Community First	This schedule requires the Applicant and the airport operator to comply with and implement the measures in the Compensation Policies, Measures and Community First document.	<p>This could be covered by a requirement in the DCO. The Applicant notes the ExA’s proposed form of requirement in the <b>Examining Authority’s commentary on, or schedule of changes to the draft DCO [PD-018]</b>, at pages 104-105.</p> <p>The Applicant is not proposing to adopt the ExA’s proposal, which requires a post-consent consultation and approval process. This is because the Compensation Policies, Measures and Community First</p>

Schedule	Detail	Applicant's Alternative
		<p>document is not an “outline” document – it is “final” as presented at the close of the examination.</p> <p>Hence the requirement merely requires a commitment (in line with the Schedule 4 wording) to implement the measures in the Compensation Policies, Measures and Community First document.</p> <p>The document would be capable of amendment in future under paragraph 2 of Schedule 2 to the draft DCO.</p> <p>The Applicant’s proposed requirement to secure the Compensation policies, measures and Community First is as follows:</p> <p><b><i>Compensation policies, measures and Community First</i></b>  <b>36.</b> <i>From the date that notice is served in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order, the undertaker must implement and comply with the compensation policies, measures and Community First document.</i></p> <p>Consequential amendments to the DCO would be as follows:</p> <p>In paragraph 1 of the Schedule 2: <i>“compensation policies, measures and Community First document” means the document of that description referenced in Schedule 9 (documents to be certified) and certified by the Secretary of State.</i></p> <p>In paragraph 2(1) of Schedule, new sub-paragraph (i) <i>compensation policies, measures and Community First document.</i> This would ensure that the document is capable of future amendment under the terms of paragraph 2(1).</p>



Schedule	Detail	Applicant's Alternative
		<p>In Schedule 9, the <i>compensation policies, measures and Community First document (revision [5])</i> would be added to the table of certified documents.</p>
<p>Schedule 8 – TRIMMA, Residual Impact Fund</p>	<p>This schedule requires the Applicant to make available £1m in the form of the “Residual Impacts Fund” (“RIF”) towards the costs of yet to be identified mitigation works identified according to the final version of transport related impacts monitoring and mitigation approach to be secured under requirement 30 of the DCO.</p>	<p>In the absence of an agreement this could be secured by way of an amendment to paragraph 30 of Schedule 2 to the DCO. A new sub-paragraph (4) would be added, in the following form:</p> <p><b>Offsite Highway Works</b></p> <p><b>30.—</b><i>(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 (“TRIMMA”) 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 Luton Borough Council, following consultation with the specified authorities, Buckinghamshire Council and National Highways.</i></p> <p><i>(2) The TRIMMA submitted under sub-paragraph (1) must be substantially in accordance with the outline TRIMMA.</i></p> <p><i>(3) From the date notice is served in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order the undertaker must implement and comply with the TRIMMA approved under sub-paragraph (1).</i></p> <p><i>(4) The undertaker must establish the Airport Transport Forum Steering Group pursuant to the terms of the transport related impacts monitoring and mitigation approach approved under sub-paragraph (1) and must make available to members of Airport Transport Forum Steering Group, no later than its first meeting, the sum of £1,000,000 (by way of the Residual Impacts Fund described in the outline transport related impacts monitoring and mitigation approach) to fund mitigation works within the category of Mitigation Type 2 works as described in the outline transport related impacts monitoring and mitigation approach.</i></p>

Schedule	Detail	Applicant's Alternative
		<p>It should be noted that the Applicant is considering, in any event, whether the RIF commitment should sit within the DCO even in circumstances where a section 106 agreement is concluded. This will be resolved as part of ongoing discussions with the Host Authorities and a final decision will be presented at Deadline 11.</p>
<p>Schedule 9 – Sustainable Transport Fund</p>	<p>This schedule requires LLAOL to make available the “Sustainable Transport Fund” (STF) funded by way of levies upon motorists parking or dropping off at the airport.</p> <p>There are also provisions for the Applicant to provide money for “pump priming” the fund and provisions as to how the Ss to be applied.</p>	<p>These provisions would not lend themselves to be replicated in a unilateral obligation and as an alternative approach the Applicant proposes a requirement to adhere to a document (to be certified under the DCO) dealing with the operation of the STF.</p> <p>The document used for this purpose would be the <b>Sustainable Transport Fund [TR020001/APP/8.119]</b> submitted at Deadline 9.</p> <p>The Applicant’s proposed form of requirement would be as follows:</p> <p><b><i>Sustainable Transport Fund</i></b>  <b><i>37. From the date that notice is served in accordance with article 44(1) (interaction with LLAOL planning permission) of this Order, the undertaker must implement the Sustainable Transport Fund.</i></b></p> <p>Consequential amendments to the DCO would be as follows:</p> <p>In paragraph 1 of the Schedule 2: <i>“Sustainable Transport Fund” means the document of that description referenced in Schedule 9 (documents to be certified) and certified by the Secretary of State.</i></p>

Schedule	Detail	Applicant's Alternative
		<p>In paragraph 2(1) of Schedule, new sub-paragraph (j) <i>Sustainable Transport Fund</i>. This would ensure that the document is capable of future amendment under the terms of paragraph 2(1).</p> <p>In Schedule 9, <i>Sustainable Transport Fund (issue 1)</i> would be added to the table of certified documents.</p> <p>It should be noted that the Applicant is considering, in any event, whether the STF commitment should sit within the DCO (and a “secured” certified document) even in circumstances where a section 106 agreement is concluded. This will be resolved as part of ongoing discussions with the Host Authorities and a final decision will be presented at Deadline 11.</p>
<p>Schedule 10 – Community Fund</p>	<p>This schedule requires LLAOL to maintain its existing “Community Fund” to which LLAOL would contribute £100,000 annually. Track violation penalties and departure noise violation fines would also be paid into it.</p>	<p>In the absence of a section 106 agreement the Applicant is willing to negotiate a side agreement with LLAOL to the same effect, but in essence the provision of the fund is an established voluntary arrangement and not necessary to make the development acceptable.</p> <p>The agreement would be negotiated / completed after the close of the examination, noting that LLAOL has already accepted the principle of the commitment (as evidenced by the draft section 106 agreement). The substantive terms of the side agreement would be the same as Schedule 10 of the draft section 106 agreement.</p> <p>The intention would be for the parties to complete the agreement, and to provide confirmation to this effect to the Secretary of State, before the decision-making stage on the DCO application commences.</p>

Schedule	Detail	Applicant's Alternative
		<p>It should also be noted that the <b>Air Noise Management Plan</b>, an update of which is being submitted at Deadline 9 [TR020001/APP/8.125], already secures the payment of track violation penalties and departure noise violation fines into a community fund.</p>
<p>Schedule 11 – Design Review</p>	<p>This schedule concerns the establishment of a design review panel by LBC and for the Applicant to meet LBC's costs and the design panel's fees.</p> <p>Detail about the operation of these arrangements are set out in the <b>Design Principles</b> document submitted by the Applicant at Deadline 9 [TR020001/APP/7.09].</p>	<p>In the absence of an agreement a unilateral obligation given by the Applicant will provide for payment of LBC's costs in this regard. See Schedule 5 of the draft unilateral agreement provided in <b>Appendix A</b>.</p>

## **APPENDIX A: DRAFT UNILATERAL UNDERTAKING**

**DATED**

**2024**

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**LONDON LUTON AIRPORT LIMITED**

**TO**

**CENTRAL BEDFORDSHIRE COUNCIL**

**HERTFORDSHIRE COUNTY COUNCIL**

**LUTON BOROUGH COUNCIL**

**NORTH HERTFORDSHIRE DISTRICT COUNCIL**

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**UNILATERAL UNDERTAKING**  
**relating to London Luton Airport**  
**Section 106 Town and Country Planning Act 1990**

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**BY**

- (1) LONDON LUTON AIRPORT LIMITED (**the Applicant**) of Hart House Business Centre, Kimpton Road, Luton, Bedfordshire, LU2 0LA;

**TO**

- (2) CENTRAL BEDFORDSHIRE COUNCIL (**CBC**) of Priory House, Monks Walk, Chicksands, Shefford SG17 5TQ;
- (3) HERTFORDSHIRE COUNTY COUNCIL (**HCC**) of County Hall, Pegs Lane, Hertford SG13 8DQ;
- (4) LUTON BOROUGH COUNCIL (**LBC**) of Town Hall, Luton LU1 2BQ;
- (5) NORTH HERTFORDSHIRE DISTRICT COUNCIL (**NHDC**) of Council Offices, Gernon Rd, Letchworth Garden City SG6 3JF.

**WHEREAS**

- (A) LBC is the local planning authority and highway authority for an administrative area the subject of the Application;
- (B) CBC is the local planning authority and highway authority for an administrative area in respect of part of the area the subject of the Application;
- (C) HCC is the County Council and highway authority for an administrative area in respect of part of the area the subject of the Application;
- (D) NHDC is the local planning authority for an administrative area in respect of part of the area the subject of the Application;

“together the Councils”

- (E) The Applicant is the freehold owner of the interest registered at the Land Registry under title numbers BD180578, BD200841 and BD147909 and has interests in land in the areas of the Councils as identified in Schedule 1 and as shown on the Site Plan.
- (F) On 27 February 2023 the Applicant applied to the Secretary of State for Transport (c/o The Planning Inspectorate) under section 37 of the Planning Act 2008 for a development consent order entitled the ‘London Luton Airport Expansion Development Consent Order’ (the **Development Consent Order**).
- (G) There is an existing planning permission with reference 17/02300/EIA that was granted on 29 June 2021 which relates to part of the Site and a section 106 agreement dated 25 June 2021 between Luton Borough Council, London Luton Airport Limited, London Luton Airport Operations Limited and Royal Bank of Scotland Plc linked to that permission.



- (H) There is an existing planning permission with reference 21/00031/VARCON that was granted on 13 October 2023 which relates to part of the Site and a section 106 agreement dated 9 December 2022 between Luton Borough Council, London Luton Airport Operations Limited, London Luton Airport Limited and the Mortgagee linked to that permission.
- (I) The Development Consent Order would enable the Applicant to acquire rights in land, to construct various works and exercise powers for the purposes of, and in connection with, the expansion of London Luton Airport in south east Luton and will extend the current operational airport with the construction of a new passenger terminal and additional aircraft stands to the north east of the runway.
- (J) The Applicant enters into this unilateral undertaking in order to secure the development consent obligations (within the meaning of section 106(14) of the 1990 Act, as inserted by s174(2) of the 2008 Act).

**NOW IT IS HEREBY AGREED AS FOLLOWS**

**1 Interpretation**

1.1 In this Deed the following terms and expressions have the following respective meanings unless otherwise stated:

<b>1990 Act</b>	means the Town and Country Planning Act 1990;
<b>2008 Act</b>	means the Planning Act 2008;
<b>Airport</b>	means London Luton Airport;
<b>Application</b>	means the application submitted by the Applicant to the Secretary of State on 27 February 2023 pursuant to section 37 of the 2008 Act for development consent for the expansion of the Airport;
<b>Authorised Development</b>	has the meaning ascribed to the term “authorised development” within the Development Consent Order;
<b>Business Day</b>	means any day apart from Saturday, Sunday and any statutory bank holiday on which clearing banks are closed in England for the transaction of ordinary business;
<b>Commencement</b>	means the carrying out of a material operation as defined in Schedule 2 of the Development Consent Order and the words ‘Commence’ and ‘Commenced’ and cognate expressions shall be construed accordingly;
<b>Commencement Date</b>	means the date of Commencement of the Authorised Development pursuant to the Development Consent Order;
<b>Compensation Code</b>	means the code of statute and case law used to determine the compensation (including but not limited to costs, fees, interest

(as prescribed by the Acquisition of Land (Rate of Interest after Entry) Regulations 1995 (or any other regulations replacing those regulations), stamp duty and VAT) to be paid to landowners and occupiers whose land or rights in land are authorised by or under any statute, to be compulsorily acquired or in which new rights may be compulsorily acquired, or whose land may be temporarily occupied, as modified by the Development Consent Order;

**Councils**

means Dacorum Borough Council, Central Bedfordshire Council, Hertfordshire County Council, Luton Borough Council, North Hertfordshire District Council, or (as the context may require) any one or more of them;

**Design Review Panel**

a panel appointed by a Design Review Body to conduct an independent review of certain elements of the proposed design of the Authorised Development;

**ESG**

has the same meaning as in Part 1 of Schedule 2 of the Development Consent Order;

**Green Horizons Park Section 106 Agreement**

means the agreement dated 25 June 2021 referred to in recital (H);

**Index Linked**

means that any sum so described in this Deed shall be increased by an amount in proportion to the increase in the All Items Index of Retail Prices ("RPI Index") issued by the Office for National Statistics from the date of this Deed (and for the Sports Pitch and Changing Room Re-Provision Contribution the relevant date is 25 June 2021) until the date on which such sum is paid in accordance with the following formula:

$$X = \text{£}Y \times B/A$$

Where:

X is the sum in question after application of this formula

£Y is the sum due under this Deed to which this formula is applied

A is the value of the RPI Index last published before the date of this Deed:

and

B is the value of the RPI Index last published before sum (£Y) is paid

Provided that if the RPI Index shall cease to exist, there shall be substituted another suitable index that the Councils shall be invited to specify;

**Secretary of State**

means the Secretary of State for Transport;

<b>Site(s)</b>	means the sites in which the Applicant has an interest as set out in Schedule 1 and shown on the Site Plan;
<b>Site Plan</b>	means the plan annexed to this Deed;
<b>Sports Pitch and Changing Room Re-Provision Contribution</b>	means the sum of £1,196,737 (one million one hundred and ninety-six thousand and seven hundred and thirty-seven pounds) payable in accordance with Schedule 2.

1.2 In interpreting this Deed:

- 1.2.1 words incorporating the singular shall include the plural and vice versa, words importing any gender include every gender;
- 1.2.2 words incorporating persons shall include firms, companies and corporations and vice versa;
- 1.2.3 references to the Councils shall include any successors to their relevant statutory and other functions;
- 1.2.4 references to numbered clauses, paragraphs or schedules are unless otherwise stated references to the relevant clauses of, paragraphs of and schedules to this Deed;
- 1.2.5 references to numbered articles, schedules, parts and paragraphs of the Development Consent Order are unless otherwise stated references to the numbered articles, schedules, parts and paragraphs comprised within the draft Development Consent Order comprised within the Application at the time that this Deed is made but are to be interpreted as being adjusted to the extent necessary to accord with the provisions of the Development Consent Order as made;
- 1.2.6 references in this Deed to statutes, by-laws, regulations, orders and delegated legislation shall include any statute, by-law, regulation, order or delegated legislation amending, re-enacting or made pursuant to the same as current and in force from time to time;
- 1.2.7 if any provision of this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected, impaired or called into question;
- 1.2.8 the recitals and headings in this Deed are for ease of reference only and shall not affect its construction or otherwise have any binding legal effect;
- 1.2.9 references to 'notice' shall mean notice in writing and notice served electronically;
- 1.2.10 references to 'including' shall mean including without limitation;
- 1.2.11 terms and expressions defined in the Schedules shall have the meanings specified wherever those terms and expressions are used in this Deed;

1.2.12 the Interpretation Act 1978 shall apply to this Deed.

## **2 Legal Effect**

2.1 This Deed is made pursuant to section 106 of the 1990 Act.

2.2 The obligations, covenants and undertakings on the part of the Applicant in this Deed are planning obligations in the form of development consent obligations and so bind that Applicant's interest in the Sites for the purposes of section 106 of the 1990 Act and are enforceable as such by the Councils in respect of their respective areas as local planning authority.

## **3 Local Land Charge**

3.1 This Deed is a local land charge and the Applicant shall seek to register it as such in accordance with the Local Land Charges Act 1975.

## **4 Conditionality**

4.1 Subject to Clauses 4.2 and 4.3 clause 5 shall not have operative effect until the Development Consent Order has come into force and all other clauses shall have operative effect from the date of this Deed.

4.2 If the grant of the Development Consent Order becomes the subject of any judicial review proceedings (including relating to any approval on a re-determination):

4.2.1 Until such time as such proceedings including any appeal have been finally determined, the terms and provisions of this Deed will remain without operational effect unless the Authorised Development has been Commenced or the notice under article 44(1) of the Development Consent Order has been served.

4.2.2 if following the final determination of such proceedings the Development Consent Order is quashed and, if the court orders the Application to be remitted to the Secretary of State, the Application is subsequently refused, this Deed will cease to have any further effect; and

4.2.3 if following the final determination of such proceedings the Authorised Development is capable of being Commenced or the notice under article 44(1) of the Development Consent Order has been or is capable of being served then this Deed will take effect in accordance with its terms.

4.3 For the purposes of this Deed, proceedings by way of judicial review are finally determined (including any approval on a redetermination):

4.3.1 when permission to bring a claim for judicial review has been refused and no further application may be made;

4.3.2 when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or

4.3.3 when any appeal is finally determined and no further appeal may be made.

## **5 Development Consent Obligations**

5.1 The Applicant undertakes to perform the development consent obligations contained in Schedules 2 to 5.

## **6 Release**

6.1 Subject to Clause 6.3 the Applicant and its successors in title and those deriving title from it shall, upon disposing of the whole or any part of their interests in the Sites, be released from all obligations in this Deed in relation to that interest or the relevant part thereof (as the case may be) but without prejudice to the rights of the Councils in relation to any antecedent breach of those obligations.

6.2 If the Applicant no longer has an interest in the Sites but is still the undertaker as defined in article 2(1) of the Development Consent Order, this Deed shall remain enforceable against it by the Councils.

6.3 Subject to clause 6.4 the Applicant shall not transfer or lease the whole or part of the benefit of the Development Consent Order pursuant to article 8 (or any remaining benefit if some of the benefit has already been transferred) with a view to that transferee becoming the undertaker for the purposes of article 2(1) of the Development Consent Order unless the prospective transferee or lessee has first entered into a Deed on terms equivalent to this Deed or otherwise on terms acceptable to the Councils.

6.4 A transfer or lease under article 8 of the Development Consent Order shall not invoke clause 6.3 if to a body specified in article 8(4)(c) to (j) of the Development Consent Order or to the extent that that the planning obligations herein bind the transferee or lessee by operation of law.

## **7 Further Planning Permissions and Development Consent Orders**

7.1 Nothing in this Deed shall be construed as prohibiting or limiting the rights of the Applicant to use or develop any part of the Sites in accordance with and to the extent permitted by, permitted development rights, planning permission, development consent or other statutory authority other than the Development Consent Order.

## **8 Expiry or Revocation**

8.1 If the Development Consent Order expires or is revoked prior to the Commencement Date then this Deed shall forthwith determine and cease to have effect and the Applicant shall request that the relevant Councils forthwith cancel all entries made in their respective registers of local land charges in respect of this Deed.

## **9 Notices**

- 9.1 Any notice, consent or approval required to be given under this Deed shall be in writing (in each case annotated with the reference 'London Luton Airport Expansion') and shall be sent to the address at the front of this Deed or instead such other address as may be notified by the relevant Council from time to time.
- 9.2 Subject to clause 9.3 any such notice must be delivered by hand or sent by first class post, registered delivery or courier service and shall conclusively be deemed, in the absence of evidence of earlier receipt, to have been received:
- 9.2.1 if delivered by hand, on the next Business Day after the day of delivery; and
- 9.2.2 if sent by first class post, registered delivery or courier service within the United Kingdom, on the day falling 2 Business Days after the day posting or dispatch, exclusive of the day of posting or dispatch.
- 9.3 Any notice hereunder may be given by electronic means if the recipient thereof has given notice in writing by reference to this clause that it will accept service by electronic means and where notice is given by electronic means the notice shall be deemed to have been served on the next Business Day after sending of it.

## **10 Notice of Authorised Development**

- 10.1 The Applicant shall provide notice to the Councils:
- 10.1.1 of the intended Commencement Date not later than 10 Business Days prior to the intended Commencement Date and the obligations in this Clause 10.1.1 shall re-apply if the Commencement does not occur on the intended date.
- 10.1.2 of the intended date of service of the notice under article 44(1) of the Development Consent Order not later than 28 Business Days prior to the intended date of service.
- 10.1.3 within 10 Business Days of the occurrence of each of the following:
- (a) the actual Commencement Date; and
- (b) the date of the service of the notice under article 44(1) of the Development Consent Order.

## **11 VAT**

- 11.1 If this Deed or anything contained in it gives rise to a taxable supply for VAT purposes by the Councils to the Applicant then, the Applicant shall pay to the relevant Council or third party an amount equal to the VAT chargeable in addition to and at the same time as any payment or the provision of any other consideration for such supply upon provision of a valid VAT invoice addressed to the Applicant.

## **12 Jurisdiction**

- 12.1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 12.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

## **13 Indexation of contributions**

- 13.1 The following payments are Index-Linked:
- 13.1.1 Sports Pitches and Changing Room Re-Provision Contribution; and
- 13.1.2 The annual payments to be made under paragraph 1.1 of Schedule 3.

## **14 Registration**

- 14.1 This Deed shall be sent by the Applicant to the relevant Councils after the date of this Deed to be registered as a local land charge in the relevant local land charges register.

**This document has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it.**

## SCHEDULE 1

### **1 The Site**

- 1.1 The freehold land within title numbers BD180578, BD200841, and BD147909 as shown edged in red on the Site Plan.



## SCHEDULE 2

### 1 Re-provision of sports pitches

1.1 On LBC confirming in writing to the Applicant that LBC will comply with the terms set out in paragraph 1.2-1.4 of this Schedule:

1.1.1 The Applicant undertakes to pay the Sports Pitch and Changing Room Re-Provision Contribution to LBC (subject to paragraph 1.3) on taking possession either compulsorily or by agreement where such possession restricts public access to any part of Wigmore Valley Park on a permanent basis for constructing infrastructure for the purposes of the expansion of the Airport pursuant to the Development Consent Order.

1.2 On accepting the payment of the Sports Pitch and Changing Room Re-Provision Contribution under this Schedule the Council does so on the following terms:

1.2.1 The Sports Pitch and Changing Room Re-Provision Contribution shall be used to provide step 5 football facility (an artificial grass football pitch suitable for non-league senior football up to step 5 of the football pyramid and associated facilities including parking provision and changing rooms) at either one or more of the following locations; Stopsley/Lothair recreation ground, Luton and/or Ely Way/Lewsey Park recreation ground, Luton and/or the replacement of, or improvements to existing adult football facilities (playing pitches and supporting facilities such as changing rooms and car parking) at either one or more of the following locations: Stopsley/Lothair recreation ground, Luton and/or Lewsey Park recreation ground, Luton.

1.3 Should a payment be made to LBC by the Applicant relating to the Sports Pitch and Changing Room Re-Provision Contribution under Schedule 4 of the Green Horizons Park Section 106 Agreement the amount paid under that agreement will be set off against the Sports Pitch and Changing Room Re-Provision Contribution payable under this schedule.

1.4 If any part of the Sports Pitch and Changing Room Re-Provision Contribution made under this schedule has not been applied in accordance with paragraph 1.2 of this schedule by the fifth anniversary of that payment then any unspent sums shall be repaid to the Applicant forthwith whether or not requested by the Applicant and the Applicant shall be entitled to request and promptly receive from LBC at any time after the relevant anniversary full details and supporting evidence of how sums paid by the Applicant under this schedule have been applied.

### SCHEDULE 3

#### 1 Green Controlled Growth – Funding Elements

- 1.1 The Applicant undertakes to make annual payments to those of the Councils which are a part of ESG such payments to be in accordance with the table in this Schedule (the “Table”) to assist them in meeting their obligations arising in relation to the ESG and any related Technical Panel on account of the Authorised Development on the basis that doing so imposes on them additional cost burdens over and above their general duties and responsibilities and in particular discharging the duties mentioned in the Table and any other responsibilities arising from their responsibilities on the ESG.
- 1.2 The payments shall be made annually, the first payment being due on the establishment of the ESG under requirement 19 of the Development Consent Order
- 1.3 Should the payments made to those of the Councils who are a part of ESG in accordance with this Schedule 5 be exhausted the Applicant will consider any detailed and reasoned written request to the Applicant by such a Council to claim any additional costs over and above the amount paid according to the Table where the work is reasonably incurred in relation to time spent on ESG and Technical Panel related work and following approval of the request by the Applicant (which approval shall not be unreasonably withheld or delayed), the Applicant shall pay the additional costs to the relevant Council within 25 Business Days of the relevant claim
- 1.4 No payments or further payments shall be due from the Applicant under this schedule to the extent that equivalent payments have been made by the Applicant directly to the ESG as a corporate entity capable of receiving them.

#### Table

ESG	£5,000 per year per Council (3 days per year to cover involvement at a single annual ESG meeting, inclusive of prep time)
Technical Panel	£5,500 per year per Council (7 days per year to cover attendance at public meeting, review of monitoring data, reporting, and if necessary, attendance at a single meeting)

## SCHEDULE 4

### **1 Prospect House Day Nursery**

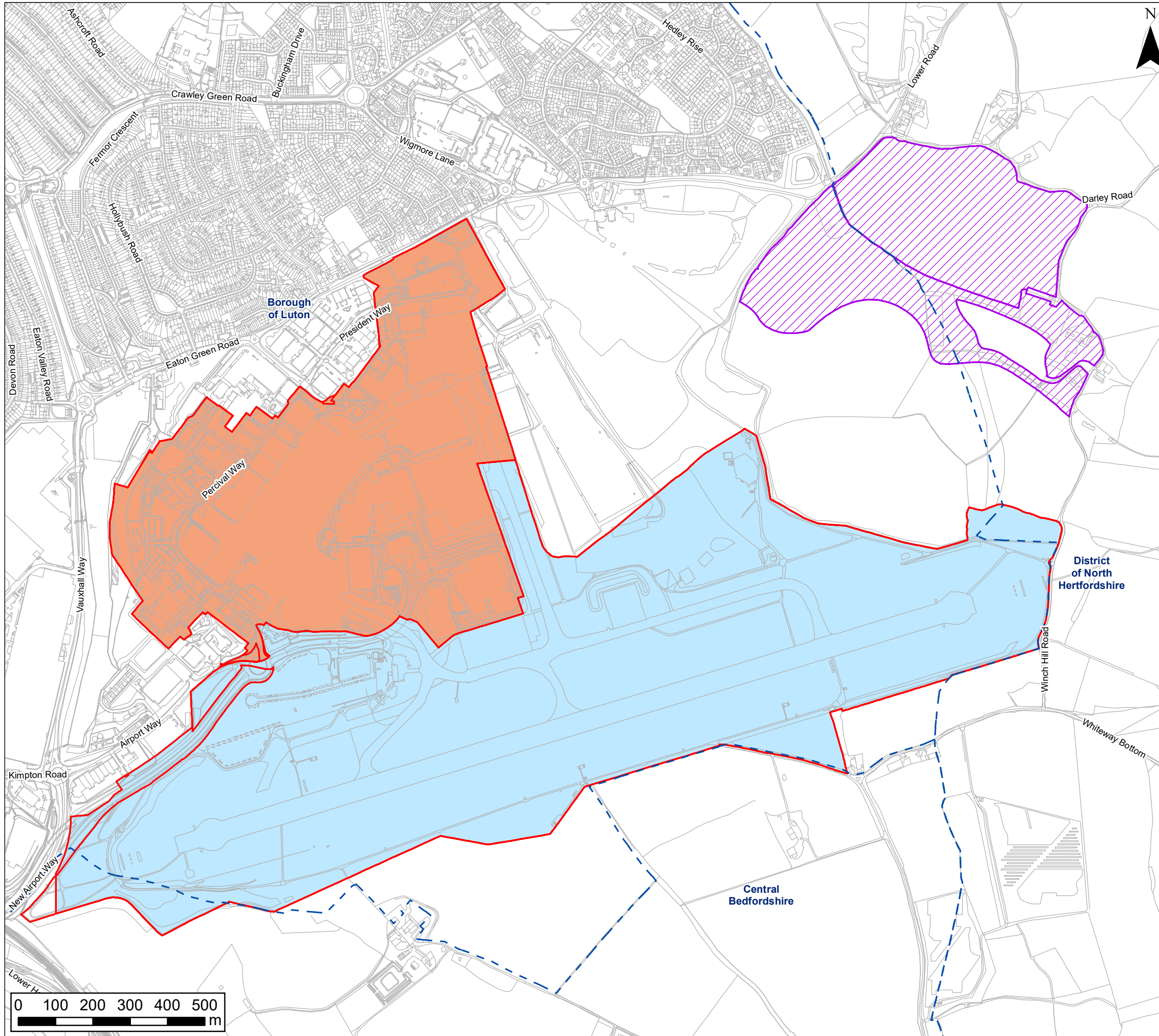
- 1.1 The Applicant undertakes to LBC that it will commission an assessment by a firm of consultants with the relevant expertise of capacity requirements in respect of nursery place provision (“the Assessment”) to ascertain whether it is necessary to replace in whole or part capacity that would be lost on account of the closure of the Prospect House Day Nursery, 140 Prospect Way, (the “Nursery”) on account of the Authorised Development.
- 1.2 The Assessment will be carried out at least eighteen months before the Applicant anticipates acquiring the land currently occupied by the Nursery such that the Nursery would have to close.
- 1.3 A draft copy of the Assessment will be provided to LBC for comment and the Applicant and the appointed firm of consultants will have regard to any comments made by LBC within 21 days of finalising the report, a copy of which will be provided to LBC.
- 1.4 If the Assessment concludes that there is a need for nursery places to be provided on account of the closure of the Nursery on account of the Authorised Development, then the Applicant covenants with LBC that it will, subject to paragraph 1.5 of this schedule:
  - 1.4.1 take appropriate and reasonable steps to ensure that the Nursery is re-provided in an alternative location to meet the identified need; or
  - 1.4.2 take such alternative steps in response to the need as have been approved by LBC.
- 1.5 The Applicant shall not be obliged to take any steps under this Schedule to the extent that such re-provision or such alternative steps are provided for under the Compensation Code.

## **SCHEDULE 5**

### **1 Design Review Panel**

- 1.1 The Applicant undertakes to meet the reasonable costs of LBC incurred in commissioning and participating in a Design Review Panel.
- 1.2 The Applicant undertakes to make payments as required under this schedule within 25 Business Days of receipt of a detailed invoice for the costs in question.

## ANNEX - SITE PLAN

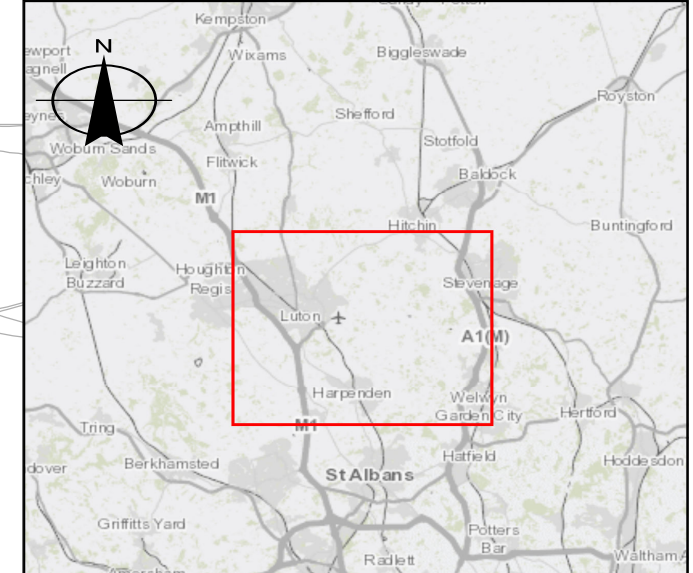


This drawing may contain mapping by permission of Ordnance Survey on behalf of HMSO © Crown Copyright and database rights 2022 Ordnance Survey 0100031673  
 All structure positions are indicative. The proposed works will be subject to detailed design development. The changes will be within limits of deviation specified in the Development Consent Order.

**KEY**

- Local Authority Boundary
- Replacement Land - Part of title BD147909
- Extent of Title BD180578
- Extent of Title BD200841

Section 106 agreement	RC	BS	SA	04/2023	P01.1
Revision History	Drawn	Checked	Approved	Date	Rev.



CLIENT:

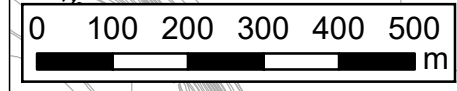
Luton Rising  
 Hart House Business Centre  
 Kimpton Road, Luton, LU2 0LA  
 www.lutonrising.org.uk

Our airport. Our community. Our planet.

**London Luton Airport Expansion  
 Development Consent Order**

Drawing Title **Site Plan  
 Sheet 1 of 2**

Purpose of issue Section 106 Agreement				Suitability S1	
Drawn	Checked	Approved	Date	Scale	Size
R.Chauhan	B.Smith	S.Adama	01/24	1:10,000	A3
DCO Application Ref. TR020001		APFP Regulation n/a	DCO Document Ref. TR020001/APP/8.167		
Drawing Number LLADCO-3C-WSP-WHS-GEN-IM-IM-0002					Revision P01.1
Project - Phase - Originator - Asset/Zone - Sub Asset - Type - Discp. - Number					



Executed as a Deed by affixing the )  
common seal of LONDON LUTON AIRPORT )  
LIMITED )  
in the presence of

[COMMON SEAL]

.....  
Director

.....  
[Director or Secretary]