Luton Rising
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February 2024

London Luton Airport Expansion

Planning Inspectorate Scheme Ref: TR020001

Volume 8 Additional Submissions (Examination)

8.192 Applicant's Response to Deadline 10 Submissions

Infrastructure Planning (Examination Procedure) Rules 2010

Application Document Ref: TR020001/APP/8.192

The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

London Luton Airport Expansion Development Consent Order 202x

8.192 APPLICANT'S RESPONSE TO DEADLINE 10 SUBMISSIONS

Deadline:	Deadline 11
Planning Inspectorate Scheme Reference:	TR020001
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Author:	Luton Rising

Version	Date	Status of Version
Issue 1	February 2024	Additional Submission - Deadline 11

Contents

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 Deadline 10 submissions by Interested Parties (IPs). This document does not include responses to matters that the Applicant considers will be addressed as part of the Statements of Common Ground (SoCG). Responses to such matters are reflected in the final SoCG documents.

1.1.2 To avoid unnecessary repetition of information, and in acknowledgement that the Examination will soon close, the Applicant has only provided responses to points of clarification or new matters raised in submissions, i.e., the Applicant has not responded to matters that it considers have already been addressed in previous submissions. The **Applicant's Closing Submissions [TR020001/APP/8.191]**, submitted at Deadline 11, provides a summary of the Applicant's final position in respect of the principal matters considered during the Examination.

1.1.3 In instances where the Applicant considers that no relevant matter has been raised or the point raised has been dealt with previously and the Applicant has not responded to a matter, this should not be read as the Applicant's acceptance of, or agreement with, the matter raised.

1.2 Structure of document

1.2.1 Where possible, the Applicant has responded to Deadline 9 submissions in Tables 2.1-2.13. This includes responses to the following submissions:

a. Buckinghamshire Council [REP10-049 & REP10-050]
b. Central Bedfordshire Council, Dacorum Borough Council, Hertfordshire County Council, Luton Borough Council & North Hertfordshire District Council (the 'Host Authorities') [REP10-051, REP10-052 & REP10-053]
c. Dacorum Borough Council, Hertfordshire County Council & North Hertfordshire District Council (the 'Hertfordshire Host Authorities') REP10-056]
d. Luton Borough Council [REP10-059]
e. National Highways [REP10-062]
f. Network Rail Infrastructure Limited [REP10-064]
g. UK Health Security Agency [REP10-066]
h. Andrew Mills-Baker [REP10-067]
i. Friends of Wigmore Park [REP10-072]
j. Jeremy Young [REP10-075]
k. LADACAN [REP10-078 & REP10-079]
l. Michael Reddington [REP10-080, REP10-081 & REP10-084]

m. Stop Luton Airport Expansion [REP10-088 & REP10-091]

n. The Harpenden Society [REP10-093]

1.2.2 The Applicant's response to the above Deadline 9 submissions are outlined in the below tables, arranged by the relevant topic.

a. Table 2.1 Air Quality and Odour

b. Table 2.2 Compensation (including Noise Insulation)

c. Table 2.3 Design

d. Table 2.4 Draft Development Consent Order

e. Table 2.5 Employment and Training Strategy

f. Table 2.6 Funding Statement

g. Table 2.7 Green Controlled Growth

h. Table 2.8 Health and Community

i. Table 2.9 Need Case (includes Employment and Economics, Fleetmix & Flightpaths)

j. Table 2.10 Noise and Vibration

k. Table 2.11 Section 106 Agreement

l. Table 2.12 Surface Access

m. Table 2.13 Town Planning

2 APPLICANT'S RESPONSE TO DEADLINE 10 SUBMISSIONS

2.1 AIR QUALITY AND ODOUR

Table 2.1 provides a response to matters the Applicant considers need to be responded to.

Table 2.1 Applicant's Response to Deadline 10 Submissions

I.D	Interested Party	Reference	Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
Odour Reporting Process				
1	Michael Reddington	**[REP10-081]** ID 1 page. 2	This paragraph states: *"…research (Ref 2) suggests that complaints increase when the profile of a site has been raised, for example when a new planning application on is made or following an incident at a site."* I would contend, as a long-term resident, that the number of complaints in relation to odour is much less than it ought to be because of a lack of confidence that LLAOL will actually do something - and in any case odour complaints are reported through the Noise reporting system. Whilst this document is very welcome it contains far too much inertia for the simple reason that odour is generally transient.	The process is considered an appropriate system to manage odour considering the insignificant odour effects predicted in **Chapter 7 of the ES [AS-076],** as stated in the **Applicant's Post Hearing Submission – Issue Specific Hearing 8 [REP6-066]**. The document gives a clear and transparent process for residents to report odour complaints and secures a process for actions to be taken.
2	Michael Reddington	**[REP10-081]** ID 2 page. 2	The figure illustrates very clearly why the system will not work. By the time LLAOL have processed the complaint, held an internal review, produced a plan etc. the odour will have dissipated in most cases. What needs to happen is that LLAOL investigate the complaint immediately - suggest within the hour - by a ending the site, 'sniff' the air and determine there and then if there is a case to answer, i.e. whether the Airport operations or an aircraft can be ruled out as the source of odour (e.g. it could be a bonfire) and advise the complainant directly. If the Airport operations or an aircraft cannot be ruled out as a source of odour then an investigation as suggested should go ahead. There must also be a time limit by which the Airport Operator reports back to the complainant.	The **Odour Reporting Process [REP8-034]** follows the Environment Agency H4 odour management guidance (Ref 1) and is considered appropriate to review the potential source of the odour and determine the effect. The guidance states that the following factors determine the degree of odour impact: frequency, intensity, duration, offensiveness, receptor sensitivity. Sniff testing and odour diaries (recommended in the odour reporting process) are best practice methods detailed in the H4 guidance that investigate these factors. Therefore, should odour events 'dissipate' quickly, the methods employed would capture this information (frequency and duration). With regards to responding to complainants, the **Odour Reporting Process [REP8-034]** states that a response to complainants with feedback will be undertaken in a timely manner which is considered appropriate as the level of review and investigation may vary in relation to the nature of the odour event (the hedonic character and indicated source of the odour) and to fully understand the factors determining the effect (e.g. frequency, intensity, duration, offensiveness, receptor sensitivity).

2.2 COMPENSATION (INCLUDING NOISE INSULATION)

Table 2.2 provides a response to matters the Applicant considers need to be responded to.

Table 2.2 Applicant's Response to Deadline 10 Submissions

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
1	LADACAN	**[REP10-078]** page. 2	1) Unreasonable small-print The disclaimer above Table 1.1 on PDF page 4 appears to be unreasonable in the context, and is likely to be offputting if reflected in a letter offering noise insulation to a property owner. It says: "Indicative Guide to Discretionary Compensation Note: The table provided is an indicative guide only and has been simplified for convenience. The table only sets out indicative claims for statutory compensation, it does not mean that there is an automatic right to compensation. A claim must be made and the outcome of any claim will depend on its own facts and whether it meets the necessary criteria for a claim as provided for in the relevant Act and compensation code. Professional advice should be sought." Our comments: a) The heading says "discretionary compensation" yet the text says "statutory compensation" – which is it? b) The text says a "claim" must be made, but throughout REP9-032 the compensations are described as an "offer" by the Applicant. If such an offer (to which property owners would be entitled because of development proposed by the Applicant) is couched to people as involving a claim which may or may not be successful, it may deter them from applying. c) The text refers to "the relevant Act" and to "professional advice" being required. These imply that complicated and potentially costly obligations would fall on the claimant. Conclusion: the small print is not in keeping with the bold PR-style claims. This is inappropriate. It may be necessary to establish the terms or formulation of a proforma offer letter at this stage.	The small-print referred to in **Table 1.1** in the Deadline 9 version of **Compensation Policies, Measures and Community First [REP9-032]** has not kept up with the development of the document. It has now been deleted in its entirety because it was a caveat relevant to statutory compensation which had originally been included in the table. See the updated version of the document submitted at Deadline 11: **Compensation Policies, Measures and Community First [TR020001/APP/7.10]**.
2	LADACAN	**[REP10-078]** page. 2	2) Inconsistency in the specification of Scheme 3 REP9-032 specifies five air noise schemes. Scheme 3 is defined on PDF pages 10, 17 and 18 as: "c) Air Noise Scheme 3 – Properties inside the night-time 55dBLAeq,8h contour and outside the daytime 60dBLAeq,16h contour;" in other words, "inside the 55dB night contour but outside the 60dB day contour". This specification is at odds with that in 6.1.5, which we think is the correct definition: "*The proposals provide eligibility from 54dBLAeq,16h and include the night-time 55dBLAeq,8h to determine properties exposed to significant observable adverse effects." which omits the "outside the 60dB day contour" requirement, as does the wording in the key to the contour maps on PDF pages 36, 38, 40, 44 and 48 which define Scheme 3 as: "Scheme 3 - 55dB LAeq,8h Night-Time Contour*"	**Compensation Policies, Measures and Community First [REP9-032]** was updated at Deadline 9 to remove the "outside the daytime 60dB$L_{Aeq,16h}$ contour" eligibility requirement.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			It is clear from the contour maps which show both the 55 dB LAeq,8h night-time contour and the 60dBLAeq daytime contour that the outlines are nearly identical, with the northern edge of the blue (60dB) line in fact falling outside the dashed blue-orange (55dB) line on its northern edge. Therefore, if the Scheme 3 specification is intended to apply only to properties "inside the 55dB night contour but outside the 60dB day contour", it would be worthless. This should be corrected.	
3	LADACAN	**[REP10-078]** page. 2-3	3) Ground Noise Eligibility for a Ground Noise scheme is confirmed in Table 1.1 column 10, but is distinguished from a Highway Noise scheme in column 11. This distinction carries forward into the relevant sections where paragraphs 6.1.24 - 6.1.28 describe the Ground Noise criteria and process in terms of noise from aircraft on the ground, and paragraphs 6.1.29 – 6.1.31 the Highway Noise criteria in terms of additional road traffic. Our comments: a) Noise from aircraft on the ground, and noise from additional traffic are cumulative, yet 6.1.28 and 6.1.43 limit provision to one Scheme. This is unreasonable: since the noise is cumulative the schemes should be cumulative if they apply to different parts of the property. b) Paragraph 6.1.27 describes modelling of free field ground noise from aircraft movements: is the ExA satisfied that such a model exists and has been adequately calibrated and tested? c) Paragraph 6.1.47 indicates a contribution of £4,500 for ground noise insulation: is the ExA satisfied that this is sufficient bearing in mind these properties would be those closest to the Airport? d) Paragraph 6.1.29 mentions the Applicant monitoring traffic levels on Crawley Green Road: is the ExA satisfied that there is sufficient independent scrutiny of this proposal? e) Paragraph 6.1.30 describes "monitoring of airport trips" in a non-specific way without clarifying who will do the monitoring, how and when it will be done, how it will be independently verifiable as fair and adequate, and which body would verify it. The referenced section 4.2 of Appendix 16.2 (REP4-023) identifies the model but does not clarify the responsibility or oversight. f) The Applicant provided a breakdown of the £60m insulation funding in REP7-072 based on an estimate of actual (not maximum) costs per property, as advised in response to REP8- 078 item ISH9-AP37, but also confirmed that Ground Noise costs were not included. This needs to be addressed and corrected.	a) The Applicant does not expect that any properties would be eligible for both highways and ground noise insulation schemes. However, to account for the unforeseen eventuality that this does occur, paragraph 6.1.44 of **Compensation Policies, Measures and Community First [TR020001/APP/7.10]** has been updated to specify that properties which qualify for the highways and ground noise insulation schemes from different facades would be eligible for both schemes. b) The model exists, it is used to determine eligibility for the airport operator's current scheme and is robust. To provide further certainty, paragraph 6.1.27 of **Compensation Policies, Measures and Community First [TR020001/APP/7.10]** has been updated to specify that the approach to ground noise modelling for the insulation scheme shall be agreed in writing with Luton Borough Council. c) Whilst some of the properties eligible for this scheme are the closest to the airport boundary, this does not mean that they are exposed to the highest levels of noise as their perpendicular distance from the airport runway means they are substantially less exposed to aircraft air noise. This can be seen in **Tables 8.3** to **8.5** of **Appendix 16.1** of the **ES [REP9-017]** which show the vast majority of receptors close to the airport are below the ground noise Significant Observed Adverse Effect Level (SOAEL), due to the ground-based noise sources and screening offered by airport buildings. As noted in section 16.9 of **Chapter 16** of the **ES [REP9-011],** all properties exposed above the ground noise SOAEL are also exposed above the air noise SOAEL so would be eligible for the full cost of insulation, avoiding any significant effects on health and quality of life. For the properties exposed between the ground noise Lowest Observed Adverse Effect Level (LOAEL) and SOAEL, the policy requirement is to mitigate and minimise noise effects in the context of sustainable development. In the context of sustainable development, £4,500 is an appropriate contribution to mitigate and minimise ground noise effects, noting that insulation would only be required on the façade facing the airport (noise source). In the **Applicant's response to Deadline 4 Hearing Actions [REP4-070]** (see **Action Point 25**), the Applicant noted that a £4,000 grant would be expected to provide insulation to 3 or 4 standard windows, a 5 sided bay window and 1 standard window, or patio doors and 1 large window. d and e) Whilst it was always intended to be the case, paragraph 6.1.31 of **Compensation Policies, Measures and Community First [TR020001/APP/7.10]** has been updated to clarify that the traffic monitoring would use data collected as part of the TRIMMA process as set out in the

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				Outline Transport Related Impacts Monitoring and Mitigation Approach [REP10-036]. This approach has been heavily scrutinised and examined throughout the DCO examination. The same paragraph has also been updated to specify that any material changes to the monitoring approach will be undertaken in consultation with Luton Borough Council. f) The Applicant has already explained that the breakdown requested was of the figures provided in the Funding Statement and that at the time that was produced the ground noise scheme was not a feature of the proposed new policy. The Applicant has also confirmed that the additional cost anticipated as a consequence of the introduction of the ground noise scheme will be able to be covered from within the contingency sums included in the figures provided in the Funding Statement and will have no material effect on the ability to deliver either the noise compensation proposals or the wider development.
4	LADACAN	**[REP10-078]** page. 3	4) Insulation Eligibility Cut-off REP8-078 Appendix C argues that the principle of exclusion after October 2019 is unreasonable. Whilst paragraph 6.1.16 of REP9-032 allows that planning permission may have been applied for at an earlier date, it fails to address the predicament of people who newly move to the area, tenants in substandard properties, or the responsibility of relevant local planning authority which granted permission for the property to be built. It is unreasonable for people now living in such properties to be denied compensation for environmental noise due to the proposed development. It is also unreasonable for an offer, if not taken up in the limited period, not to be repeated for 5 years.	An eligibility cut-off date will commonly feature in policies of this nature, as was explained in oral evidence at CAH1. There is an expectation that once the detail of the Proposed Development is in the public domain it will appear in local searches to inform purchasers who are in the market considering the acquisition of a property that would be affected. The policy was already amended so properties that may have been in planning prior to 16 October 2019 could be eligible even if sold or occupied after the date. To help recognise these further concerns the policy has now been further amended in paragraph 6.1.16 for submission at Deadline 11 so that the date may be lifted in circumstances where property owners can demonstrate why they could not reasonably have known about the Proposed Development at the point at which they acquired and occupied the property if that was after 16 October 2019. The period of 5 years before an offer is repeated is no longer part of the policy. NISC will determine those to be offered insulation in any given period without any such express constraint.
5	LADACAN	**[REP10-078]** page. 3	5) Transition arrangements It is unclear why no comparison is provided between the Proposed and Existing schemes for the year 2027. Such a comparison is likely to be of value during the transition period, since this would indicate whether there would be likely to be any difficulty caused by eligibility changes. It should further be noted that in the 19mppa permission letter APP/B0230/V/22/3296455 under 'Agreed Matters' (PDF page 30) it states in relation to the funding of insulation: "*The proposal provides for an enhanced Noise Insulation Scheme (NIS), secured by planning conditions and obligations, providing a fund of £4,500 per property (index linked) with an uncapped annual fund. The Applicant [LLAOL] intends to allocate £8.5M to the scheme to ensure <u>all properties meeting the relevant criteria can be insulated within 5 years.</u>"* (our underline)	Paragraph 6.1.49 of the policy covers the Applicant's approach to the transition from the existing noise insulation scheme to the proposed scheme. At the point of a notice being served in accordance with article 44(1) of the draft development consent order the planning conditions and obligations associated with 19mppa would fall away.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
6	LADACAN	**[REP10-078]** page. 3-4	6) Proposed process The Process description has been updated and improved since REP7-036 but involves multiple agents, so we have reviewed for possible issues. In summary the Process responsibilities are: **The Applicant is designated as being responsible for**: - preparing a roll out plan and timetable for consultation with the Noise Insulation Sub Committee ("NISC") and approval by Luton Borough Council ("LBC") (6.1.36-37) - applying at any time, after consulting the NISC, to LBC to vary the roll-out plan (6.1.38) - providing information, guidance and annual feedback to the NISC (6.1.39-40) - maintaining the NISC of the LLACC, or an equivalent (6.1.42) - writing to owners of properties eligible for noise insulation at each stage of the plan to invite applications and then arranging for a contractor to visit to prepare a schedule of work (6.1.42) - in situations where multiple schemes apply, deciding relevance and compensation (6.1.47-48) - being proactive in informing and communicating with homeowners (6.1.49) - taking all reasonable steps to roll out the offer, and appointing multiple suppliers (6.1.50) - (presumably) arranging a multi-stage information programme and publicity (6.1.51) - providing property details to the contractor, who then has SLA targets (6.1.52) - monitoring the performance of contractors (6.1.56) - requiring contractors to offer suitable solutions for Listed Buildings (6.1.19) - (presumably) contacting tenants and occupiers to invite applications (6.1.57) - (presumably) providing support for the vulnerable people or non-English speakers (6.1.58) **The Contractor is designated as being responsible for**: - visiting to confirm eligible rooms, identify suitable insulation, and issue quote (6.1.52-54) - (presumably) arranging manufacturers survey to finalise and confirm measurements (6.1.55) - operating a complaints procedure and feeding back to Applicant (6.1.56) **The NISC is designated as being responsible for**: (see C1.1.1 unless otherwise indicated) - dealing with appeals if homeowners are dissatisfied with specification of work (also in 6.1.44) - making decisions (C1.1.2) about prioritization of eligible properties - receiving quarterly reports - monitoring and providing guidance on feedback	Noted. The Applicant does not disagree with this commentary as set out by the Interested Party although notes there are no questions to respond to.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			- engaging to maximise takeup of insulation (unclear how) - considering and commenting on administration, operation, and development of the policy - reviewing levels of contribution over time - engaging in consultation on testing policy The NISC may have representatives from the Applicant, Airport Operator, LBC, Host Authorities, and other LLACC member organisations (C1.1.2) **The Airport Operator is designated as being responsible for:** - making payment to the contractor for authorised works (6.1.46) - appointing the independent Chair of the NISC subject to consultation (C1.1.2) The proposed development would, if permitted, commence prior to the completion of a previous development of the same site (Project Curium) which has a different and less onerous programme of work to deliver noise insulation, and that programme is (a) not yet complete and (b) subject to change if the permission for expansion to 19 million passengers per annum ("P19") is invoked. This situation makes it particularly important that transition arrangements adequately reflect the outstanding commitments to date, and outstanding funds due from the Airport Operator.	
7	LADACAN	**[REP10-078]** page. 5	7) Comments on proposed process These comments relate to the summary of process in the previous section. a) Wherever we have indicated "presumably" there is no explicit assignment of responsibility for the specified task: it would be advisable to rectify this otherwise there will be confusion over accountability. b) The NISC has no executive authority, and currently only meets once annually. LADACAN's NISC representative advises that it reviews a generic list of addresses (specific house details are redacted) provided by the Airport Operator's noise consultant and discusses priorities. This is far less onerous than what is now being proposed. c) It is unclear how NISC would engage to encourage take-up if specific address details are (as at present) redacted, as they also have been for test reports, nor how it would know which properties are rented and which owned. d) For NISC to provide a reasonable response time to property owner appeals, it would need to meet on an ad-hoc and probably much more regular basis, which its members may not wish or be able to accommodate. e) Receiving and reviewing quarterly reports would require NISC to meet at least quarterly in any case, rather than annually as at present.	(a) Noted. To remove the uncertainty the Applicant has made amendments to paragraphs 6.1.51, 6.1.52. 6.1.56 and 6.1.59 of the policy submitted at Deadline 11. (b) Noted. The role of NISC is anticipated to be broader under the proposed scheme and was the intention from the outset. Comparability with the existing arrangement is therefore not relevant. (c) The Terms of Reference for NISC scope out the broader role which will include being provided with reports on delivery and performance against targets. With its remit to be consulted these questions of detail can be addressed and will be in the interests of the Applicant who is committed to delivering the noise insulation in accordance with the rollout plan. The Interested Party's comments raise issues of data and data protection which the Applicant will need to work through with NISC and other stakeholders to ensure ongoing compliance under any new process to be put in place. (d) Noted. The membership will need to be reviewed and updated as necessary so that it can meet the challenges of the wider role. The Applicant has amended paragraph 6.1.45 and the NISC Terms of Reference in the policy to decide all appeals within 3 months of being made. (e) Noted. (f) Noted and as already stated above, the membership will need to be reviewed and updated as necessary so that it can meet the challenges of the wider role.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			f) The majority of proposed NISC members appear not to be qualified to provide guidance on feedback, to engage in consultation on testing policy, or to encourage insulation take-up. g) Unless the roll-out plan is an overall full-life Programme plan which reflects the budgets as indicated in REP8-078 item ISH9-AP37 and reproduced below, and the timeframe agreed with relevant Host Authorities, it would be impossible for NISC members to review levels of contribution and progress against plan.	(g) The Applicant is confident that the proposals and process for rollout set out in the policy will provide the framework required for NISC members to fulfil the role identified and required. (h) The Applicant intends for the NISC to be informed through the process that has been outlined in the policy so that its members are able to fully engage in consultation and provide comments that will help improve the operation of the rollout plan. This will include assisting the Applicant with the development of the policy over time. The Applicant does not agree that responsibility for the rollout of the noise insulation policy would better sit with the Environmental Scrutiny Group and has been consistent on this point. Through the NISC Terms of Reference the structure and membership of the committee will overcome the current perceived lack of independence and with the requirement for approval from Luton Borough Council and securing of the policy through the s106 agreement the Applicant considers the proposal as presented to be robust. The obligations to deliver the policy in accordance with the rollout plan are expressly set out in the policy including the mechanisms for monitoring, review and continual improvement. The Applicant has consistently made the point that its ability to deliver the policy is also dependent upon the degree to which homeowners engage in the process. It is not therefore reasonable for sanctions to be imposed in circumstances where homeowners decline the noise insulation offered under the policy or delay the delivery of the policy. This could be due to delay in providing access to the property for survey, delay in acceptance of the proposed insulation measures and/or delay in providing access to the property to complete the works. In response to the comment about Project Curium, this was a 2014 permission, different in very many respects to the current application which is significantly broader in scope and more generous in what it offers. The detailed commitments set out in the proposed policy will also be secured under a s106 agreement. 'Suppliers' in paragraph 6.1.50 has been changed to 'contractors' so that the terminology is consistent throughout the document. The Applicant is committed to ensuring that its insulation contractors each create and operate a complaints procedure. This is not so that they can mark their own homework but to provide the homeowner with a clear and structured process for complaints that might arise from any aspect of the contractors responsibilities. Holding the contractor to account in this way will drive the right behaviours and assist with the need to deliver against the rollout plan. The ability for the Applicant to then monitor and review the complaints received will inform discussions on performance and the need for improvement over time.

Scheme	No. of Cat 3 Properties - Core Case	Cost Per Property	Expected % Take Up	Budget Cost of Policy - Core Case	No. of Cat 3 Properties - Faster Growth Case	Budget Cost of Policy - Faster Growth Case	Additional Cost of 100% Take up - Core Case	Additional Cost of 100% Take up - Faster Growth Case
1	150	£ 20,000	80%	£ 2,400,000	400	£ 6,400,000	£ 600,000	£ 1,600,000
2	1300	£ 18,500	80%	£ 19,240,000	1300	£ 19,240,000	£ 4,810,000	£ 4,810,000
3	500	£ 20,000	80%	£ 8,000,000	650	£ 10,400,000	£ 2,000,000	£ 2,600,000
4	2450	£ 6,000	50%	£ 7,350,000	2550	£ 7,650,000		
5	3350	£ 4,500	50%	£ 7,537,500	3950	£ 8,887,500		
				£ 44,527,500		£ 52,577,500	£ 44,527,500	£ 52,577,500
			Contingency	£ 8,905,500	20%	£ 10,515,500		
	Total		Total	**£ 53,433,000**		**£ 63,093,000**	**£ 51,937,500**	**£ 61,587,500**

Notes:

- Actual Budget in Funding Statement is £60m - high mid point between core and faster growth cases
- Estimated take up rates showed cost of faster growth case as £52.5m
- Contingency of 20% recognised uncertainty at submission stage
- Funding has cost of inflation added elsewhere, £60m being a Day One cost
- Cumulative take up columns show sufficient funding to complete 100% of Schemes 1-3 from contingency were that to arise

h) Without timely and adequately granular information from all the relevant participants, it would also be difficult for NISC to comment on operation and development of the policy.

It appears from the above that the NISC is being nominated as Administrator of the Programme, but some of its participants are executive agents in the Programme, and the independent NISC members have no executive authority over them. This would seem to be a fundamental weakness in the proposal. The ExA may wish to consider whether some or all of the NISC responsibility for ensuring timely roll out would sit better with the Environmental Scrutiny Group, for example.

In any case, if the delivery of the Programme fell significantly behind schedule for any reason, it is unclear where effective responsibility and accountability would lie or how executive action would be incentivised to bring the Programme back on track. What sanctions are proposed for slippage?

It is worth noting that the existing noise insulation scheme appears to be governed by the Project Curium Section 106 Agreement, with LBC responsible for ensuring the performance of the Airport Operator of its obligations under that Agreement, but apparently having failed to do so. Involving the Environmental Scrutiny Group would externalise and further strengthen the oversight.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			The word "suppliers" is introduced in the key commitment paragraph 6.1.50 – does this mean that suppliers are being distinguished from contract installers? If so, the commitment may not have the hoped-for effect. There should also be a commitment to appoint multiple installers – and to take all reasonable steps to ensure that the entire supply and installation chain is adequate to meet the required delivery timescales and standards, with professional accreditation and 10-year warranty. We note that the contractor is required to operate a complaints procedure (in relation to its own work) rather than that being independent and verifiable. This is inappropriate particularly if there are multiple contractors marking their own homework. An independently provided, consistent and transparent complaints procedure with published statistics associated with the Luton Rising brand would no doubt help to incentivise the necessary quality assurance.	
8	LADACAN	**[REP10-078]** page. 6	There is no mention of which independent body will perform pre/post-installation testing to verify adequate noise attenuation to ICCAN standards. Section 2 on page 7 of ICCAN's March 2021 document "ICCAN review of noise insulation" provides the justifications for adequate testing of properties before and after noise insulation, and the setting of a noise reduction target. It states: *"Only one airport was found to set indoor noise reduction targets. London City Airport set a target for their noise insulation works at the 57 dB noise contour and state the work must achieve "an average sound reduction not less than 25 dB averaged over 100 to 3150 Hz in accordance with BS EN ISO 16283-3:2016" (BRE, 2020)"* The Executive Summary of REP9-032 states in relation to noise insulation: "In many cases the proposal is to go above and beyond the legal compensation requirements and current best practice to provide an offer that Luton Rising (the Applicant) believes is fair." It is therefore reasonable and right for communities to expect the Applicant to honour this bold commitment and go above and beyond the best practice standard set by London City Airport.	It is not necessary to require an independent body to undertake the pre/post-installation testing which will be done by an appointed contractor. There are no ICCAN standards for adequate noise attenuation. The Applicant acknowledges the London City Airport example but notes (as do ICCAN) that this is not standard practice, and that no other airport sets indoor noise reduction targets. The Applicant also notes that the insulations scheme for the Proposed Development goes further than the London City Airport scheme. In their review report (Ref 2), ICCAN states (emphasis added) *"Setting a performance based indoor noise reduction target is a good approach to setting realistic expectations with property owners. ICCAN welcomes this approach; however, more work needs to be done to determine the criteria used in setting such targets throughout UK airports."* It is important to note that not having an indoor noise reduction target does not mean that the noise insulation schemes will be any less effective.
9	LADACAN	**[REP10-078]** page. 6	It is unclear which agency would fund this testing; the Applicant (from the Funding Statement) or the Airport Operator. The procedures and measures required to ensure adequate noise reduction is delivered would be important quality and sufficiency assurances that need to be documented as part of the roll out plan, signed off after independent expert assessment – by the Technical Panel?	The Applicant does not consider there to be need for any further clarity on this matter. The Applicant is responsible for the funding of the noise insulation policy and the policy will be secured through a s106 agreement with the local planning authorities.
10	LADACAN	**[REP10-078]** page. 7	8) Provision in the DCO Our comments in the previous Sections have highlighted Programme issues which still need to be clarified and resolved,	Noted. This appears to be a summary of the representation by the Interested Party which have now been addressed separately above.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			regardless of the question posed by the ExA regarding provision in the DCO. Resolving the comments would, we believe, go some way to making the Programme more likely to succeed in achieving its objectives. However, with the current lack of clarity over accountability and a lack of executive means by which slippage would promptly and effectively be remedied, the commitment in paragraph 6.1.50 alone is inadequate. As indicated in Section 7 above, the key commitment in paragraph 6.1.50 is not clear and specific: by introducing the term "supplier" it blurs where additional resource would actually be provided. In response to the specific question, we are of the view that to ensure compensation would be rolled out in a timely way parallel with growth, the key milestones and spending targets of the roll out plan would need to be part of the DCO. Ultimately, if adequate progress was not being made with compensation, then growth should be paused until the issues were rectified. Provision should be also made to prevent applications under paragraph 6.1.38 from the Applicant to LBC (to modify the roll out plan) from reducing the timeliness of roll out or the effectiveness of the compensation, given that the NISC has no executive authority and the Applicant has a vested interest in achieving growth. The obligation to be proactive in paragraph 6.1.49 is not specific, which is why we request that the DCO obligates the timely achievement of roll out against specific takeup targets as incentivisation. We appreciate that there is a dependency on property owners responding to the offer, but that is where the commitment to be proactive needs to be incentivised. LBC had supported the 19mppa application partly on the basis that it would result in betterment for communities through the installation of noise insulation. So ultimately it could be for LBC to consider whether (for example) some bye-law or other statutory provision would be necessary to facilitate property owners being willing to assist improvement of the local housing stock by the implementation of the Programme. LBC as a unitary authority is responsible for Environmental Health matters relating to residents in its jurisdiction.	

2.3 DESIGN

Table 2.3 provides a response to matters the Applicant considers need to be responded to.

Table 2.3 Applicant's Response to Deadline 10 Submissions

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
1	Friends of Wigmore Park	**[REP10-072]** page. 1	Concerns regarding contradictory submissions relating to Wigmore Valley Park FoWP have always been told that the replacement Wigmore Park would open before sections of the existing Wigmore Park was closed off, so allegedly increasing the park by at least 10%. This is confirmed in REP 4-071 London Luton Airport Expansion Development Consent Order Applicant's Response to Compulsory Acquisition Hearing 1 Actions 14-17: Wigmore Valley Park 5 OPENING OF REPLACEMENT SPACE LAND 5.1 Overview 5.1.1 In response to Action 17 of the Compulsory Action Hearing, the Applicant has considered where in the application documents it has secured its commitment to not commence works within WVP until the replacement land is open. 5.2 Code of Construction Practice 5.2.1 This matter is addressed in the Code of Construction Practice [APP-049] at paragraph 12.1.1 (e). The Applicant has amended the earlier text to make clear that works cannot commence within WVP until the replacement land is accessible to the public. The Applicant does not consider a separate definition of "open" necessary as accessible to the public is sufficiently clear. The applicant now contradicts the above statement, as set out below, by stating it will take 3 years for the replacement park to open. REP8-011 5.02 Appendix 4.1 Construction Method Statement and Programme Report. 4.3.6 The replacement open space would be developed in Assessment Phase 1 ahead of any earthworks taking place in Wigmore Valley Park. The replacement open space would retain the existing main entrance into Wigmore Valley Park, adjoining Wigmore Hall / Wigmore Pavilion, and would incorporate several of the enhanced facilities proposed in this area as part of Green Horizons (formerly known as New Century Park). The applicant mentions earthworks but not other works. Contained within the same document is Appendix B - Phasing diagram plans. PDF Page 125 covers Phase 1-1 year 1 and shows 1 Site clearance –replacement open space, together with a compound and under 2. Car Parks P6 & P7 – site clearance and construct new surface car parks. PDF Page 127 covers Phase 1-3 year 3 and only then does it show a replacement Wigmore Park. We ask that the ExA insist that the new park fully opens first, as stated in the commitment made in REP4-071 by the applicant, if the DCO is approved. This is due to a substantial reduction in the size of the park for 3 years	The Applicant remains committed to opening the replacement park prior to developing Wigmore Valley Park as stated in **Applicant's response to Compulsory Acquisition Hearing 1 Actions 14-17: Wigmore Valley Park [REP4-071]** and in the **Code of Construction Practice (CoCP) [REP8-013**], Appendix 4.2 to the ES. Paragraph 12.1.1 states, *"maintaining access and not commencing construction works in the existing Wigmore Valley Park until the replacement open space is accessible to the public".* The CoCP wording in relation to this point was strengthened at Deadline 4 in response to Action Point 17 at CAH1 **[REP4-070].** It should be noted that the CoCP is a secured document through requirement 8 of the **Draft Development Consent Order [TR020001/APP/2.01].** The **Construction Method Statement and Programme Report (CMS) [REP9-011]** is not a secured document, it was designed to inform assessments, and to provide an example of how construction could occur. However, the commitment to create the replacement open space prior to works within Wigmore Park was a key programme requirement when writing the **CMS [REP9-011]** refer to paragraph 3.1.8 which describes the critical path for Phase 1, "*In Assessment Phase 1 the critical path would run through the environmental mitigation and the creation of the replacement open space. This is required to allow the construction of the new surface car parks P6 and P7 (refer to inset 2.2). This in turn allows the existing long stay car park P5 (refer to inset 2.2) to be truncated providing space for the earthworks and construction of the last three aircraft stands*". There is, therefore, a commitment on the part of the Applicant to open the replacement park prior to developing Wigmore Valley Park which is secured through the draft DCO.
2	Dacorum Borough Council, Hertfordshire County Council,	**[REP10-056]** Table 5 page. 5	As detailed in the Hertfordshire Host Authorities' Principal Areas of Disagreement Summary Statement [REP8-055] and the Hertfordshire Host Authorities' Comments on Any Further Information / Submissions Received by Deadline 6 [REP7-085],	The Applicant has responded to this within the **Applicant's Response to Deadline 8 Submissions [REP9-051]** and further within **Applicant's Response to Deadline 9 Submissions** provided at Deadline 10 **[REP10-045].**

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
	North Hertfordshire District Council		the Hertfordshire Host Authorities consider that the following updates should be made to Section 3: Landscape design principles: • The Hertfordshire Host Authorities are not aware of any narrative relating to how the Proposed Development has responded to the existing site character, landform, and context (including local vernacular), and how landform and built form considerations have informed the outline design but would welcome signposting to such. Such narrative relating to landform and built form considerations informing outline design should be complimented by the requirements set out in the Design Principles [REP9-031] document to provide clear direction in terms of massing, rooflines, colour – in broad terms – to indicate how they have and should respond to local character, context or setting to ensure that such considerations are carried through to detailed design. Whilst there have been some steps towards this (such as a couple of additions to Section 4 regarding facade treatments) which are clearly welcomed, the Hertfordshire Host Authorities believe more should be included. The Applicant has not made these changes to Section 3 in Design Principles (Tracked Change Version) [REP9-031]	

2.4 DRAFT DEVELOPMENT CONSENT ORDER

Table 2.4 provides a response to matters the Applicant considers need to be responded to.

Table 2.4 Applicant's Response to Deadline 10 Submissions

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
1	Central Bedfordshire Council, Dacorum Borough Council, Hertfordshire County Council, Luton Borough Council, North Hertfordshire District Council (the 'Host Authorities')	**[REP10-053]** para. 11 page. 10	**11. SCHEDULE 8 (PROTECTIVE PROVISIONS) – PART 6 (FOR THE PROTECTION OF LOCAL HIGHWAY AUTHORITIES)** 11.1. The Host Authorities that are also highway authorities welcome the Applicant providing more detailed protective provisions that go some way towards addressing the concerns articulated in their ISH 10 Post Hearing Submission (including written summary of oral submissions) [REP6- 095]. 11.2. As outlined in the Host Authorities Deadline 9 Response on DCO Matters [REP9-063] there remains areas of concern (for example, provisions relating to a security, the treatment of road safety audits and the interactions between technical highway approvals and the broader "planning" approval needed under requirement 6) and as such the Host Authorities have provided the Applicant with a mark-up that would address those concerns. 11.3. The Host Authorities understand that the Applicant intends to incorporate some of those amendments in the version of the	The Applicant confirms that it has made substantial amendments to Part 6 of Schedule 8 to the **draft DCO [TR020001/APP/2.01]** as submitted for Deadline 10. These amendments were based on the proposed drafting as provided to the Applicant by the Host Authorities on 2 February 2024 and seek to address the concerns that the highway authorities have raised. The Applicant did not accept the Host Authority proposals in full but made substantial amendments as a result. Since Deadline 10, the Applicant and the local highway authorities have further corresponded and Applicant understands that there now remain only three outstanding items not agreed. To help isolate for the ExA the points in dispute, the Applicant has included at [**Appendix 1**] the version of the protective provisions that it understands the host authorities will be submitting at Deadline 11, marked up with the changes necessary to make them acceptable to the Applicant. Comments are included against each outstanding item setting out the Applicant's justification for its position. In summary:

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			DCO submitted at Deadline 10. However, to ensure that the Examining Authority has sight of the Host Authorities' proposed drafting it is appended to this submission. The Host Authorities have received early sight of the Applicant's proposed amendments to the local highway authority protective provisions proposed to be submitted at Deadline 10 but require further time to consider them. It remains the Host Authorities hope that agreement can be reached on the protective provisions in time for Deadline 11.	- Paragraph 55(1) – the Applicant has reinserted "commencement" – this aligns with Schedule 2 and the Applicant considers this would be beneficial to all parties, e.g. it provides a mechanism to expedite works and reduce disruption. Note the effect of article 13 means the Applicant cannot restrict etc. highways without local authority permission in any event; - Paragraph 59(6) – the purpose of this provision is to reimburse the undertaker's cost of "undoing" works for a requested inspection, but which then finds that the work was satisfactory in the first place. The Applicant's view is that reimbursement is reasonable in that context – the provision is avoidable if inspections are carried out at a point that doesn't require reversal of works; - Paragraph 68 – given the scale of local highway works could vary considerably, the Applicant considers that a minimum insurance sum should not be listed here, to allow proportionate flexibility which is ultimately still in the control of the local highway authority.
2	Network Rail	**[REP10-064]** page. 1	1.1 Throughout the examination process (including from the outset in its written representations) Network Rail has stated that, to ensure the safe and efficient operation of the railway, its standard form of protective provisions need to be included in the. Development Consent Order ('DCO'). 1.2 The draft form of the DCO submitted by applicant on 25 January 2024 was the first time that the promoter had included any form of protective provisions in favour of Network Rail. However, the form of the protective provisions in that draft include substantial revisions to the standard form which are not agreed by Network Rail…. 2.1 Network Rail's protective provisions have been carefully drafted to ensure appropriate and proportionate protections for the railway….	The Applicant's was provided directly with a copy of Network Rail's (NR's) submission dated 1 February 2024, which contained its preferred protective provisions and which is now in the Examination Library **[REP10-064]**. Whilst the Applicant appreciates direct receipt of the NR submission, being the first substantive response received from NR with regard to the protective provisions, consideration of the submission does not provide the Applicant with any new information that changes the Applicant's position on the amended form of protective provisions in the **draft DCO** submitted at Deadline 10 **[REP10-003]** or the conclusions reached that the Proposed Development has "no serious detriment" to Network Rail's undertaking (please see the **Applicant's Position Paper on Sections 127 and 138 of the Planning Act 2008 [REP10-043]**). The Applicant's position remains that the effects of the Proposed Development will not materially affect NR's operational land or interests, and will not adversely affect its ability to carry out their statutory undertaking, as has been explained to NR through correspondence and meetings with them. Where permanent acquisition is required over NR Land, specifically the Multi Storey Car Park (MSCP) being plots 1-22, 1-25 and 1-25a detailed in [**Appendix 2**], the Applicant and NR are engaged in discussions to reach agreement by voluntary sale. The other principal form of acquisition relates to a right of access for car park users through an existing footway under the railway. Again, both parties are in discussion over the voluntary acquisition of such a right through an existing tunnel.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
				It is worth stating that the Applicant first contacted NR back in November 2019 in this regard. There was, understandably a hiatus in discussions due to Covid 19, with discussions recommencing in earnest in September 2023. Considering this, the form of protective provisions the Applicant has provided NR is considered sufficient to account for the minimal to no impacts to NR's operational land and interests. The Applicant provided to NR a summary of the impacts of the Proposed Development against NR plots to explain this in a form similar to [**Appendix 2**] of this response paper. As detailed therein, the effect of the Proposed Development on NR land is as follows: - The land where permanent acquisition is sought, the MSCP, is being sought by the Applicant through voluntary acquisition and is not considered operational land in any event; - A right of pedestrian access via an existing NR pedestrian tunnel under the railway – no substantive construction is proposed to take place under the railway other than installation of additional lighting; - Minor highway works associated with MSCP and highway upgrades. These are works to an existing (not new) highway which could be undertaken by local highway authority under permitted development rights with no apparent recourse to NR in that event; a number of NR's property interests are understood legacy sub-surface highway rights (e.g. *ad medium filum*) and not "operational" railway interests. The plot by plot analysis in [**Appendix 2**] demonstrates that there is no interference with the live railway and no interference with NR apparatus. Considering this, there is arguably no need for NR to have any protective provisions, but in recognition of NR's status the Applicant has included protective provisions which are substantially similar to what NR has asked for – including plan approval for anything which may affect railway property but with some modifications to be proportionate to the impacts as explained above. The Applicant notes that NR has communicated they are unwilling to amend their standard protective provisions at all. In the Applicant's communication with NR, they have maintained that their standard protective provisions cannot be amended on the face of the DCO, and that a framework agreement should be entered into. NR confirmed that they would provide this from of framework agreement. As at Deadline 10, NR has not provided the Applicant with this framework agreement. The Applicant considers negotiation at this stage of a previously unseen framework agreement at this stage of the examination is not feasible and in any event the Applicant does not consider such an agreement to be necessary considering the protective provisions on the face of the draft DCO, and the minimal nature of any effects on NR land and apparatus.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
				The Applicant does not consider NR's argument that, as these are their "standard" protective provisions, which have also been used in other DCOs, to hold much weight. Each infrastructure project varies in scale and effects, and to disregard issues of proportionately and necessity when drafting an Order undermines basic drafting protocol and best practice. An Applicant is not permitted such latitude when called to justify the provisions contained in its draft Order. The Applicant has always been willing to provide NR with protective provisions proportionate to the scale of impact of the Proposed Development to NR's operation. The Applicant has provided explanation to NR as to why it considers the amended from of protective provisions are proportionate to the scale of impact, as detailed in [**Appendix 2**]. NR have not provided any substantive evidence or explanation to contradict this position and have not engaged sufficiently on the specific impacts of this project, instead falling back on "standard" positions. To assist the ExA in understanding how the parties' positions differ, the Applicant has included at [**Appendix 3**] the protective provisions supplied by Network Rail at Deadline 10 **[REP10-064]**, marked-up to highlight the changes necessary to align to make those provisions acceptable to the Applicant and to align with the NR protective provisions in the Applicant's preferred **draft DCO [REP10-003].** Appendix 3 contains in comment bubbles the justification for the Applicant's amendments.
3	Network Rail	**[REP10-064]** page. 1-2	***Compulsory acquisition powers*** 2.2 The promoter has indicated that they are not willing to include a restriction on the exercise of compulsory acquisition of land and rights in land. As set out in Network Rail's response to written questions (ExQ1), the Book of Reference details 17 plots in which Network Rail has an interest…. 2.3 It would severely compromise Network Rail's ability to carry out its statutory functions if the promoter were to have unfettered power to compulsorily acquire rights and interests belonging to Network Rail and on which it relies for the functioning of the rail network. As such, the wording at paragraph 4 at Appendix 1 [*Network Rail's preferred drafting*] provides that the promoter cannot exercise its powers in relation to railway property without the consent of Network Rail. 2.4 The wording at paragraph 4(6) of Appendix 1 provides that this consent must not be unreasonably withheld (but may be given subject to conditions). Paragraph 4(6) should provide the promoter with sufficient comfort that Network Rail cannot act unreasonably when consent is sought. The promoter also has the reassurance that the restriction on the exercise of such powers only applies in relation to "railway property". Network Rail are not	In response to paragraph 2.2 and 2.3, the Applicant does not agree to NR's request to reserve an ability to exercise a right of consent and add conditions to any approval given. The Applicant does not agree as it considers that such a provision (i) is unnecessary and (ii) would risk compromising the efficient and effective exercise of those powers. The inclusion of the 'consent provision' is unnecessary because the Protective Provisions included at Schedule 8 to the **draft DCO [REP10-003]** for NR's benefit already provide NR and its undertaking with ample protection. The Applicant has agreed to secure NR's approval before carrying out any 'specified work' on NR's land – this means that NR already have an effective means of controlling those aspects of the authorised development that will interact with its undertaking. The Applicant is concerned to ensure it retains unfettered land powers – having to secure consent to the exercise of those powers could prove protracted if the Applicant and NR are unable to agree commercial matters relating to their exercise. The compulsory acquisition process already allows for any disagreements on commercial matters to be resolved in a tried and tested way, through the referral of compensation disputes to the Upper Tribunal to be determined in accordance with the compensation code. It would not necessarily be unreasonable for NR to take a different view to the Applicant in respect of commercial matters. The Applicant is concerned that any dispute on commercial matters could delay or preclude the exercise of

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			seeking to control the exercise of powers save in respect of railway and land on or in which it has interests or assets. 2.5 Network Rail has stated that any arrangements for the voluntary transfer of land and/or extinguishment of any rights should be governed by an agreement between the parties. There is currently no agreement in place, and we note that in its Section 127 submission, the promoter states that it "does not consider such an agreement to be necessary in light of the protective provisions on the face of the draft DCO". However, the protective provisions put forward by the promoter do not include any such protections (in regard to this or asset protection measures referred to below) and so, in the absence of an agreement, Network Rail is left exposed to the unfettered acquisition of its land and rights. 2.6 It is standard practice for DCOs to include protective provisions in favour of statutory undertakers and/or those protective provisions to provide a restriction on the exercise of a promoter's compulsory acquisition powers to ensure that such powers do not have a detrimental impact on the ability of the undertaker to carry out its statutory functions. Network Rail objected to the absence of compulsory purchase protection in their favour during the examination of The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022. In that case the Secretary of State considered that it was appropriate to include such provisions to ensure an appropriate level of protection for land, apparatus and its statutory undertaking. There is no justification for the absence of such protections in this case.	the land powers to the detriment of the timely and efficient delivery of the authorised development. Thus, reference to the consent provision being exercised 'reasonably' would not address this concern. The Applicant is cognisant that there are many DCOs which include a consent provision in respect of land powers. However, what is not clear from examining these precedents alone is the private arrangements that are likely to have been reached privately – to effectively document the giving of consent in advance such that the risk of commercial matters delaying the development in question has already been resolved. The Applicant must retain compulsory acquisition powers in respect of land where voluntary agreement has not yet been obtained or in the circumstance where voluntary agreement may later prove to have granted insufficient rights. Moreover, compulsory powers are more readily enforceable so reducing additional risk, cost and delay. On the subject of precedent, the Applicant would direct the ExA to the decision letter of the Secretary of State in respect of the previously cited Hinkley Point C Connection Project Development Consent Order 2016 where the specific matter of the appropriateness of including a consent provision was considered in the context of railway land (although note that that Order also does not include consent provisions for the benefit of the Port of Bristol notwithstanding that the scheme in question passed through the operational port). Paragraph 95 of the Secretary of State's decision letter reads: "*The first area relates to NRIL's request that provisions should be included in the Order that would ensure that the Applicant could not exercise powers of compulsory acquisition in relation to railway property without consent from Network Rail. The Applicant argued that this provision could compromise its ability to deliver the Development. The ExA noted that NRIL has not objected in principle to the proposal and not presented any evidence to suggest that the proposals would be incompatible with the efficient and safe operation of the railway. The ExA therefore concluded that this provision was not necessary or reasonable and could compromise the Applicant's ability to deliver the Development [ER 8.5.230]. The Secretary of State sees no reason to disagree with this conclusion."* This is not an abnormal finding. The Applicant would note that the issue was considered again in the Hornsea Three DCO project. In particular, the Recommendation Report noted that: "*In particular, we note that the Applicant's preferred protective provisions would require full engineering details of any works carried out by the undertaker within 15m of any railway property to be approved by NR. We consider that this is an important point when assessing whether there would be serious detriment to NR's undertaking*".

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
				The ExA went on to state that it preferred the promoter's drafting (which did not have a consent requirement). The Secretary of State agreed. There is no provision within the Planning Act 2008 which requires an Applicant to secure NR's consent to the exercise of Order powers (in contrast with for instance, the position of the Crown where such provision has been made in section 135 of the Planning Act 2008) and the Applicant is not persuaded of any basis on which such consent ought to required. In response to paragraph 2.6, the Applicant notes NR have referenced the decision made in the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 (the "Keadby Order". The Applicant does not consider reliance on the Keadby Order appropriate. The Keadby Order had wider impacts on NR's operational land as raised by NR which the Secretary of State observed within the recommendation report. Specifically the Keadby Order was seeking to authorise work either above or adjacent to NR's operational railway and works, which may impede NR's ability to ensure the safe, efficient and economical operation of the railway network.
4	Network Rail	**[REP10-064]** page. 2	***Asset protection provisions*** 2.7 The promoter has deleted the requirement at paragraph 4(7) to enter into an asset protection agreement prior to the carrying out of any specified work. "Specified work" is defined in the protective provisions as "so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property." The promoter has indicated that there is minimal impact or no impact on Network Rail's land and assets and so considers this wording unnecessary. This appears to be slight shift in position as the promoter previously argued there was simply no impact. Network Rail were only given information to determine the impact of the proposals on the railway network in mid December 2023. Network Rail are considering the impact of the proposals and currently there is no evidence to suggest that there is minimal or no impact. In the absence of information at this stage which provides certainty as to the impact, Network Rail requires the reassurance that, if required having regard to the impacts, an asset protection agreement will be entered into if this is determined to be required by Network Rail. 2.8 Similarly, Because Network Rail remains unclear as to the extent of the impact of the proposals on its network and assets, it is necessary that the works powers referenced in paragraph 4(1) of Appendix 1 are not exercised without the consent of Network Rail. The same reasonableness requirements referred to above in paragraph 2.4 apply.	The inclusion of a requirement to enter into an asset protection agreement for every phase of works of the Proposed Development is considered disproportionate considering the impacts of the Proposed Development as noted above. The Applicant is particularly concerned, basing its experience of NR's clearance process, which is still ongoing, that NR's procedures would cause considerable delay and frustrate the delivery of the Proposed Development. However, the Applicant remains open to discussing appropriate forms of agreement, but this should not be *required* as an obligation on the face of the draft DCO.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			2.9 In the version submitted on 25 January, the promoter is suggesting that before commencing any specified work they simply provide plans of those works to Network Rail's engineer. Given the limited time Network Rail has had to assess the impacts of the proposals, the wording proposed by the promoter does not provide an appropriate level of protection. For this reason, Network Rail object to the wording proposed by the promoter.	
5	Network Rail	**[REP10-064]** page. 3	***EMI*** 2.10 The promoter has deleted the wording requiring the undertaker to undertake EMI testing of the authorised development prior to commencement. Instead, they have included revised wording whereby if, at any time prior to completion, the testing or commissioning of the authorised development causes EMI then the promoter must cease the use of the development until such time as the EMI has been remedied. The difference between commissioning and completion in this context is unclear. It is only at the point that the development is operational that EMI is likely to arise. If the scope for Network Rail to require the use to cease is limited to the pre-completion period, then the protection afforded to Network Rail is minimal. To provide any meaningful protection the testing needs to be carried out prior to commencement of operation – the wording in 11(6) and 11(7)d) of Appendix 1 need to be included to secure that protection. 2.11 Where Network Rail has given notice to the promoter of planned changes to its apparatus before the approval of any specified works plans, it is appropriate for those changes to be factored into the baseline for the purpose of assessing any electromagnetic interference. Disregarding those notified and planned changes would prejudice Network Rail. The wording at paragraph 11(2) at Appendix 1 needs to be included in the form set out for this reason. 2.12 The EMI wording proposed by Network Rail is very standard. See, for example The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022. No explanation has been provided as to why the promoter is seeking to deviate from this.	NR's standard EMI provision requires the Applicant to carry out testing prior of the "authorised development" (i.e. an existing airport some distance from the railway) prior to commencement to determine if EMI is caused and if it is caused the Applicant may not commence the use or operation of the authorised development until measures have been taken to prevent EMI occurring. The Applicant does not agree to this commitment being included in the protective provisions. This drafting may be appropriate for other infrastructure schemes such as electricity cables or gas mains, but is disproportionate and inappropriate in the context of this project. There is no interference with the live railway. NR has not provided evidence to the contrary, so the Applicant is not clear on how any EMI is likely to arise. In any event, to seek a compromise in terms of the protective provisions, the Applicant has inserted alternative proportionate wording at paragraph 79(6) of the draft DCO which obliges the Applicant to, prior to completion of a specified work, cease to use the work causing EMI notified by NR until the issue is remedied.
6	Network Rail	**[REP10-064]** page. 3-5	***Indemnity provisions***	The Applicant has proposed an appropriate form of indemnity. The indemnity ensures the Applicant will be liable for remedying any damage caused to NR's property as a result of a 'specified work'. The Applicant cannot agree to an indemnity for consequential losses in the manner proposed by NR. To the

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			2.13 The promoter has materially amended the indemnity provision at paragraph 15 without providing any explanation for these changes. None of the changes to paragraph 15 are agreed but of particular concern is the insertion by the promoter of the following: "*(3) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any* *indirect or consequential loss or loss of profits, except that the sums payable by the undertaker* *under that sub-paragraph include a sum equivalent to the relevant costs in circumstances* *where—* *(a) Network Rail is liable to make payment of the relevant costs pursuant to the terms of an* *agreement between the Network Rail and a train operator; and* *(b) the existence of that agreement and the extent of Network Rail's liability to make payment* *of the relevant costs pursuant to its terms has previously been disclosed in writing to the* *undertaker, but not otherwise*." 2.14 The Secretary of State had to consider the appropriateness of this very same wording when proposed in respect of The A1 Birtley to Coal House Development Consent Order. The Secretary of State concluded that there are no adequate grounds for deviating from Network Rail's standard indemnity. There are no adequate grounds in this case either (and indeed no justification has been put forward by the promoter for the deletion). 2.15 The effect of the Applicant's proposed paragraph 32(4) is to exclude "indirect or consequential loss or loss of profit" from the scope of the indemnity. There is an express carve out from that exclusion where Network Rail is liable for costs to a train operator under an agreement with such operator and where the agreement and the extent of Network Rail's liability has previously been disclosed in writing. 2.16 Firstly, agreements with train operators are commercially sensitive, and the Office of Rail and Road only provides redacted copes of such train operator contracts for that reason. Second,	extent such loss was attributable to the authorised development and recoverable in law it would be open to NR to pursue it in the usual way. It is at the Applicant's discretion to seek to limit the scope of the indemnity and that is what the Applicant is seeking to do here. As such the absence of a reference to consequential losses does not diminish or reduce NR's rights in law but rather protects the Applicant against a presumption that such losses were recoverable under the protective provisions. In response to paragraph 2.14, as noted throughout the Applicant's response to NR each scheme must be treated on its merits with cross-reference to comparable schemes provided as guidance; a linear scheme such as The A1 Birtley to Coal House Development Consent Order is not comparable for the purposes of these protective provisions. In response to paragraph 2.16, the Applicant clarifies that these agreements do not need to be shared with the Applicant, simply notification that these agreements exist and the extent of NR's liability under these agreements. As noted in the **Applicant's Response to Deadline 7 Submissions [REP8-038]** the inclusion of a requirement provides transparency to the Applicant, providing them with the knowledge of any potential costs that could arise, and is not overly onerous, especially considering only two train operating companies will be caught under the Proposed Scheme. In response to paragraph 2.19, the Applicant did not consider this drafting added to what was already included in the protective provisions, however the Applicant has conceded this point and reinserted the drafting at Deadline 10.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			this wording places an administrative burden on Network Rail to disclose these agreements because failure to do so would invalidate the indemnity. Thirdly, the wording seeks to prevent Network Rail from recovering losses which it would be entitled to recover under common law. It is neither reasonable nor appropriate that a loss suffered by Network Rail as a consequence of the actions of the promoter which would be recoverable under common law should be excluded from being recoverable under the protective provision. 2.17 If the Secretary of State is minded to accept the provision as proposed by the Applicant then the exclusion should be limited so that it addresses only the mischief relating to the lack of foreseeability in respect of any losses. In such circumstances it proposes the redrafting of paragraph 32(4) as follows (whilst noting that such amendment would leave NR open to an element of risk for which it is not funded): "*In no circumstances is the undertaker liable to Network Rail under subparagraph (1) for any* *indirect or consequential loss that was not in the reasonable contemplation of the parties at the* *time of making the Order*". 2.18 The promoter has also sought to limit the definition of "relevant costs" to direct losses which is, for the reasons above, considered unacceptable…. 2.19 In addition, the promoter has sought (without explanation) to exclude from the scope of the indemnity any losses (i) arising as a result of any act or omission of the undertaker whilst accessing to or egressing from the authorised development (ii) in respect of any damage caused to, railway property or delay to the operation of the railway caused as a result of access or egress from the authorised development (ii) costs incurred by Network Rail in complying with any railway operational procedures or obtaining consent. 2.20 The extent of the impact of the proposal on the railway remains uncertain and so limiting the scope of the indemnity in the way proposed leaves Network Rail exposed to the potential for losses arising from the conduct of the	

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			undertaker, which it cannot recover. There is no justification for that. 2.21 Amongst other changes, the promoter has amended the wording at paragraph 15(2). The amendment to limb (b) is particularly concerning as the promoter is seeking the ability, where it does not consent to any settlement or compromise of a claim, to then have sole conduct of that settlement or compromise. Given that Network Rail is a statutory body and has responsibilities for matters including rail safety, it is not in a position to permit a corporate entity to take over conduct of claims, the detail of which cannot be known at this stage. This is an inappropriate power and should not be included in the order.	
7	Network Rail	**[REP10-064]** page. 5	***Transfer of the benefit of the powers*** 2.23 The promoter has deleted the requirement to notify Network Rail if any application for the transfer of the benefit of the Order is sought. This wording is included in Network Rail's standard form protective provisions so that it has visibility of any proposed transfer and to enable it (in light of the information provided) to form a view on whether the transfer of the powers would have any implications on railway safety and operation. This is simply a notification requirement, with only light touch information needing to be provided (nature of the application, extent of the geographical area to which it relates etc.). No consent from Network Rail is required. Given that there are 17 plots of land in which Network Rail has interests, this provision is reasonable and proportionate.	The Applicant has reinserted this provision at NR's request, save that the notification provision has been limited to a transfer of powers in relation to a specified work. The Applicant considers this to be a reasonable and proportionate compromise.
8	Luton Borough Council	**[REP10-059]** Table 2.5 ID.1 to ID.12 page. 5	The Applicant has failed to include LBC in the list of the Host Authorities. The submission at Deadline 8 of the 'Host Authorities' Response at Deadline 8 to DCO Matters' was submitted on behalf of all five Host Authorities. Any further comment on these matters will be provided in the separate document, 'Host Authorities' Response at Deadline 10 to DCO Matters'.	The Applicant notes Luton Borough Council's (LBC) comment and apologises for its mistake in omitting LBC from the Interested Party column at Table 2.5, IDs 1 to 12 of **Applicant's Response to Deadline 8 Submissions [REP9-051]**. The Applicant confirms that this was a typographical error and that it understands that the response document **REP8-052** was written and submitted on behalf of all five Host Authorities.
9	Central Bedfordshire Council, Dacorum Borough Council, Hertfordshire County Council, Luton Borough Council, North Hertfordshire District Council ('the Host Authorities')	**[REP10-053]** para. 2.1-2.4	**ARTICLE 2 (INTERPRETATION)** The Host Authorities note the inclusion in article 2 of new paragraphs (12) and (13) which together have the effect of requiring **any application for a consent subject to a "deemed consent" provision to include a statement explaining the effect of that deemed consent provision.** The Host Authorities have set out in detail their concerns with deemed consent provisions, see in particular its response to Action Point 14 arising from Issue Specific Hearing 10, which is recorded in its Post Hearing Submission (including written summary of oral submissions) [REP6-095]. The effect of this provision is to require the undertaker to include a "health warning" somewhere on an application for a deemed	The Applicant disagrees with the Host Authorities' position that this provision holds "limited weight". The provision provides that where a deemed consent provision applies anywhere within the Order, it is only effective if the undertaker has included a statement notifying the discharging body of its effect as part of the application for consent. This provides any such bodies with sufficient notice that if they do not respond within the allocated timeframe, consent will be deemed to have been given. This approach adopted by the Applicant has also been used on a number of made Orders, such as: The Longfield Solar Farm Order 2023, The A47 Wansford to Sutton Development Consent Order 2023, A12 Chelmsford to A120 Widening Development Consent Order 2024 and The Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			consent. **It does not materially reduce the likelihood of the adverse effects of deemed consent provisions** previously outlined by the Host Authorities. As such, its inclusion ought to be given limited weight when weighed against the Host Authorities' previously articulated concerns in relation to deemed consents. The Host Authorities are content with the movement of the definition of "highway works" to article 2(1) and the subsequent amendments article 8(4)(j).	
10	Central Bedfordshire Council, Dacorum Borough Council, Hertfordshire County Council, Luton Borough Council, North Hertfordshire District Council ('the Host Authorities')	**[REP10-053]** para. 5.1 to 5.6	ARTICLE 45 (APPLICATION OF THE 1990 ACT) The Host Authorities remain of the view that there is merit in **including within the DCO satisfactory provisions that seek to clarify how the development authorised by the DCO and other development that has the benefit of planning permission are to co-exist,** where co-existence is acceptable in planning terms. In general terms the Host Authorities welcome the amendments to article 45 that **clarify when an "inconsistency" has arisen** and which confirm that the scope of the article is concerned only with inconsistencies as between planning permission and development consent and not other "powers or rights" under the Order. The Host Authorities would **suggest that the definition** of "inconsistency" is amended as follows: "inconsistency" and cognate expressions means a circumstance in which a physical conflict exists, or one in which development is no longer capable of being physically implemented ~~or otherwise operated~~ in accordance with the permission or consent granted; and" 5.3. The reference to "cognate expressions" ensures that the definition is applied to the use of the word "inconsistent" (see paragraph (2)). The reference to "operated" ought to be deleted to further narrow the circumstances in which an inconsistency may benefit from these provisions such that it remains clear the physical incompatibility of developments is the driver and so that other less certain aspects (such as how it is operated) are afforded less prominence. The Applicant's amendments go a significant way to addressing the concerns raised by the Host Authorities in relation to this provision. **There remain residual concerns in relation to how,**	The Applicant welcomes the confirmation that "there is merit in including within the DCO satisfactory provisions that seek to clarify how the development authorised by the DCO and other development that has the benefit of planning permission are to co-exist" as well as the clear acknowledgement that "The Applicant's amendments go a significant way to addressing the concerns raised by the Host Authorities in relation to this provision." By way of context, even though the Host Authorities offered their in principle support for the provision, they requested that the references to powers (rather than the authorised development) be removed, and that a definition of "inconsistency" be added. The Applicant has acceded to both requests, and considers the provisions are legally justified (a position accepted by the Host Authorities), necessary (also a position accepted by the Host Authorities), and indeed go further in defining and limiting the scope of this provision as compared with other precedents. At Deadline 10, the Host Authorities have raised new comments which cover their "residual" issues with the provision. In respect of the request to add a reference to "cognate expressions", the Applicant has no objection to the amendment if the ExA and Secretary of State are minded to include such drafting. The Host Authorities also request the deletion of "or otherwise operated" in the newly inserted definition of "inconsistency". No sound or justified reason is provided for this other than assertion that such a deletion would ensure "physical incompatibility of developments is the driver and so that other less certain aspects (such as how it is operated) are afforded less prominence". The Applicant does not agree. If a planning permission cannot be operated in accordance with a planning permission, that is severe enough an outcome that it should be regulated by the provisions concerned. More fundamentally, the Applicant considers that the Host Authorities concern that they may be a "lacuna" in enforcement is unfounded. In particular, the Host Authorities state that "it would seem that the effect of article 45 would be to allow that development to continue to operate without compliance with the condition that compels the mitigation to be carried out or maintained". This is not correct. If development was permitted under a relevant planning permission, and the DCO did not provide authorisation for that development, the condition in the planning permission must be complied with. It is only where there is an authorised work under the DCO that the conditions which

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			in practical terms, an inconsistency between the authorised development and other development would be resolved where, for example, it later proves that important mitigation for another planning permission could not be delivered by reason of an inconsistency with the authorised development. In such circumstances it would seem that the effect of article 45 would be to allow that development to continue to operate without compliance with the condition that compels the mitigation to be carried out or maintained. In relation to the existing LLOAL planning permission the Applicant has addressed this concern via article 44(4). The Host Authorities remain **concerned with the potential scenario where inconsistent developments falls into the lacuna between article 45(2) or 45(3) and 45(4) which can be read as potentially allowing for such development to be immune from enforcement** under either the Planning Act 2008 or the Town and Country Planning Act 1990. Consistent with its submissions at Issue Specific Hearing 10, the Host Authorities consider it is important that where there is an inconsistency there nonetheless **remains clarity as to which of the consenting regimes** is being relied upon in relation to which aspects of the two conflicting developments. It cannot be right that development which is consistent with neither the planning permission nor development consent order becomes immune from enforcement There are numerous ways in which these issue could be tackled. One way would be by a**mending article 45(5) to require the undertaker to submit for the approval of the relevant planning authority a notification specifying which aspects of the conflicting development are proceeding under the Order and which are proceeding under the planning permission and thereafter for that determination to apply paragraphs (2) to (4) as required.** Paragraph (5) currently stops short of this. If there are concerns in relation to the timescales and processes for determination or appeal then such a provision could readily be included in a requirement to which paragraphs (2) to (4) are made subject.	may otherwise apply would be disapplied. As the Applicant has explained, the mitigation required in connection with the Proposed Development is secured under the DCO. The Applicant emphasises that the provision has the same effect as precedented provisions, and similar provision is included in the draft Lower Thames Crossing (and given the support from the local authorities on that scheme, it is anticipated these provisions will be precedented should development consent be granted). The Applicant refers to the **Applicant's Response to the Examining Authority's Commentary on the Draft DCO [REP8-036]** in which this concern is shown to be fundamentally misconceived. The Host Authorities' new suggestion that an approval mechanism would assuage this remaining "residual" concern. In the Applicant's view, such a mechanism is disproportionate given the narrow terms on which the provision applies, and the requirement to provide notification of the conflicts (inserted at the request of the Host Authorities). No precedent is cited for such an inclusion, and as the Applicant has stressed, the precedents which do exist are both broader and lack the definitions and processes the Applicant has inserted to address the concerns of the Host Authorities. Without prejudice to this position, if the Examining Authority and/or Secretary of State are minded to remove the provisions in the absence of the suggestion put forward, the Applicant sees the unnecessary and unprecedented suggestion as being preferable to the removal of the provisions given the serious and fundamental issues which the Applicant has explained. This could be achieved by simply substituting "notify" with "agree with" in subparagraph (5).
11	Central Bedfordshire Council, Dacorum Borough Council, Hertfordshire County Council, Luton Borough Council, North Hertfordshire District Council ('the Host Authorities')	**[REP10-053]** para. 5.7	The Host Authorities note the Applicant frequently refers in its responses to the provisions of articles 44 and 45 being well precedented. While it is true that **many development consent orders contain provisions that seek to reconcile other development consents or planning permission the value that should be afforded to such precedents in the circumstances of this proposed development is limited. This is because the majority of those precedents do not seek to convert an existing development permitted under the Town and Country Planning Act 1990 to be expanded and converted into a DCO; they tend to be for new linear infrastructure** where different	The Applicant does not consider these statements are accurate or reflect DCO practice and precedent. Since the Hillside judgment, equivalent provisions have been included in DCOs (see, for example, Article 8(2) of The Drax Power Station 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' and Article 8 of the Slough Multifuel Extension Order 2023 sets out that 'anything done by the undertaker in accordance with this Order

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			considerations apply. Secondly, **many of those precedents pre-date Hillside** and subsequent cases that follow it.	does not constitute a breach of any planning permission issued pursuant to the 1990 Act). The distinction which is raised by the Host Authorities is that (1) the precedents relate to linear infrastructure (this is not correct, and the majority of precedents cited, including the aforementioned two post-Hillside are not linear developments) and (2) the precedents do not deal with development which was previously permitted under the Town and Country Planning Act 1990 (this is also incorrect, the two aforementioned recent precedents are precisely those kinds of development, and in any event, no such distinction prevents the same effect arising for other precedents cited).
12	Central Bedfordshire Council, Dacorum Borough Council, Hertfordshire County Council, Luton Borough Council, North Hertfordshire District Council ('the Host Authorities')	**[REP10-053]** para. 9.1 – 9.3	**Requirement 20 (ENVIRONMENTAL SCRUTINY GROUP)** The Host Authorities **remain concerned that the definition requires such persons to be "local authority officers" which could be construed as precluding the appointment of consultants or contractors or other such persons with sufficient knowledge,** training, expertise and authority to act appropriately as a member of the ESG on behalf of the Host Authority concerned. Consequently the Host Authorities **consider the definition ought to be amended as follows: ""competent officer" means a local authority officer a person appointed by the local authority that has sufficient training and experience or knowledge to consider reports from technical specialists and use these to support a decision-making function linked to a planning consent;"**	The Applicant does not object in principle to the amendment sought. However, the Applicant would note that the costs which are secured (and which are proportionate) by reference to officer time. The Applicant considers that officers are able to fulfil the functions on the ESG. The Applicant would stress that it is not the intention of the GCG Framework to require or fund the hiring of external consultants in connection with the ESG. The Applicant would ask the Host Authorities to note that payments for such external consultants is not a matter which will affect the payment of sums under the s106 agreements, or any funding provided by way of a side agreement.
13	Dacorum Borough Council, Hertfordshire County Council, North Hertfordshire District Council	**[REP10-056]** ref. 2.4.15 page. 2	The **representatives of the local authorities on ESG should be competent officers** working within the relevant local authorities. Planning professionals have the relevant experience of considering reports from technical specialists and using these to support a decision-making function through deciding planning proposals, which is similar in concept to the function of the ESG. The requirement for officers will also help ensure that any decisions made by the ESG are made on an impartial, apolitical basis. The Hertfordshire Host Authorities remain concerned with the wording in this paragraph. The Hertfordshire Host Authorities welcome the amendments to now reference "competent officers working with the relevant local authorities" but remain of the opinion that nomination of a suitably qualified person should rest with the Council and not the Chair of the Environmental Scrutiny Group (ESG). This will be reflected in the final Statements of Common Ground (SoCG) between the Applicant and the Hertfordshire Host Authorities to be submitted at Deadline 11.	The Applicant considers that an independent chairperson is capable of making objective 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.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
14	National Highways	**[REP10-062]**	It is National Highways' position that notwithstanding the fact that no land or rights are proposed to be acquired (and therefore the provisions of s127/138 are not engaged), the substantive issues between the parties does cause serious detriment to the strategic road network and consequently we will be making submissions at Deadline 11. As we understand that the Applicant has not submitted our form of preferred wording in the final draft DCO to be submitted at Deadline 10, we attach the National Highways preferred version of the protective provisions to this letter.	The Applicant notes that National Highways (NH) submitted its preferred protective provisions at Deadline 10. Since then the Applicant has corresponded with National Highways and resolved some areas of disagreement (including the bond sum, which the Applicant is content to be 200% on the "face" of the DCO). However there remains elements of National Highways' preferred protective provisions which the Applicant objects to **in the strongest possible terms**, on the basis that they are not justified or necessary and would be serious detrimental to the delivery of the Proposed Development. The Applicant has been provided by National Highways with the form of protective it is submitting at Deadline 11. To assist the ExA, this form of protective provisions is appended at [**Appendix 4**], but marked up with the amendments the Applicant requires to put them into an acceptable form. The Applicant has used comment bubbles to explain to the ExA why it cannot accept the elements of the protective provisions which are in dispute, and which are wholly disproportionate in effect. Given the severity and importance of these issues to the Applicant, its rebuttals to the elements of NH's protective provisions in dispute and repeated below (the numbering is that of National Highways preferred protective provisions, unamended): **Paragraph 2(1) – definition of "national highways mitigation works"** Grampian conditions are objected to by the Applicant in the strongest possible terms. Consequently, these definitions which relate to Grampian conditions proposed by National Highways should not be accepted. For the reasons set out in row ID 7 of Table 2.12 of this document (the **Applicant's response to D10 submissions**), the Applicant's position is that Grampian conditions are not necessary nor justified given the commitments in favour of National Highways in the TRIMMA process, which secures the delivery of mitigation works at the appropriate time. **Paragraph 4 – enforcement of Grampian conditions.** This provision is unnecessary in the absence of Grampian conditions. More generally, the Applicant understands that National Highways is of the view that commitments made to it via the TRIMMA process (such as funding) are not acceptable because they will not be enforceable by National Highways, and therefore National Highways requires a specific enforcement provision on the "face" of the draft DCO. The Applicant considers this interpretation to be misconceived. If the Applicant fails to comply with the TRIMMA (e.g. by reneging on funding) it would be in breach of requirement 30. This would be a "difference" capable of being taken by National

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
				Highways to arbitration under article 52. That is a statutory arbitration for the purposes of section 94 of the Arbitration Act 1996, and any award under an arbitration is capable of being enforced in the courts under section 66 of the 1996 Act. **Paragraph 5(1) – Prior approvals** The use of the term "authorised development" is opposed in paragraph 5(1), since this dictates the timing of the prior approval provision. National Highways' proposal would have the effect of requiring all highway works – for the duration of the entire 20 plus year project – to be approved before the Applicant has commenced any development. This is manifestly unreasonable and indeed unfeasible and undeliverable for both the Applicant and National Highways. For highways due in Phases 2a and 2b (mid 2030s onwards) it is simply not possible to comply with paragraph 5(1)(a) to (j) in 2023 / 2024, when the project would intend to commence. This provision should apply to "specified works", so that it is engaged only when a phase of highway works comes forward and applies to each separate phase. **Paragraph 5(1)(c)(iv) and 5(1)(d) – Construction Traffic Management Plan** National Highways is a consultee on the Construction Traffic Management Plan under Schedule 2, approved by the relevant planning authority, and National Highways should not have the ability to circumvent that process. **Paragraph 6(1)(a) – Notifications** The Applicant objects to the wording initially proposed by National Highways, however the Applicant understands from discussions with National Highways that the commitment "*as soon as reasonably practicable following service of notice under Article 44(1), inform National Highways that such notice has been served*" is accepted by them. This mirrors the notification process for local authorities in article 44(2). **Paragraph 6(12)-(13) – Notice by National Highways to cease operation of the airport** These sub-paragraphs cannot be accepted. It is entirely disproportionate and unreasonable for NH to be granted a reserve power to cease the operation of a consented development on the basis that NH considers it is or "may" be leading to an increase in traffic on the network, in combination with other developments which would not be subject to such a restriction.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
				On that point, the Applicant is not aware of *any* consented development, anywhere in the country, which is subject to a power under which NH can compel that development to cease. The Applicant surmises that this is because proposed paragraph 6(12)-(13) fail any test of reasonableness or necessity. They would also have the gravest commercial implications for the airport's expansion plans, given the risk that they entail. The provision is also undeliverable in the context of an airport – there is simply no commercial or practical reality in which an international airport can simply cease operations (given allocated slots for airlines, committed passenger bookings, the loss of jobs and benefits) pending the delivery of highway mitigation works, entirely within the gift of National Highways to approve or not. The Applicant's GCG regime and TRIMMA process will ensure no unacceptable impacts are caused on the SRN. This proposal at 6(12)-(13) by National Highways should be given very short shrift and demonstrates the challenges faced by the Applicant in reaching a negotiated settlement with National Highways. **Paragraph 7(1)(d) – Payments** The inclusion of costs "in connection with the Order" is imprecise and unclear in effect. The Applicant is concerned that this is being used to recover examination costs, reimbursement of which has not been agreed and is not accepted. The Applicant has made, in its protective provisions, what it considers to be a proportionate and reasonable commitment to cover NH's costs under this provision.

2.5 EMPLOYMENT & TRAINING STRATEGY

Table 2.5 provides a response to matters the Applicant considers need to be responded to.

Table 2.5 Applicant's Response to Deadline 10 Submissions

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
1	Stop Luton Airport Expansion	**[REP10-088]** page. 2	What happens to those employed in those jobs in the slack periods between each phase?	The text in the ETS notes that the phases outlined within the Strategy are purely assessment phases and the development may come forward differently. Further details of those employed and continuation of employment between phases will be developed once consent has been granted and construction has begun.
2	Stop Luton Airport Expansion	**[REP10-088]** page. 2	There is some confusion as when referring to Figure 2.3 it does not appear that most long-term jobs growth during operations will occur in the next decade. Please explain and be clearer or	The query on the text is noted by the Applicant. The figure shows that the highest growth in jobs will occur up until 2039, with a 20% increase in direct jobs across Assessment Phase 1 and Phase 2. This is further detailed in **Figure 2.4** within the **ETS [REP8-020]**.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			reword the paragraph to accurately reflect the true meaning / numbers?	

2.6 FUNDING STATEMENT

Table 2.6 provides a response to matters the Applicant considers need to be responded to.

Table 2.6 Applicant's Response to Deadline 10 Submissions

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
Submission of 2023/23 Accounts				
1	Andrew Mills-Baker	**[REP10-067]**	I am making a further representation in response to the Applicant's response to my Deadline 8 submission on the failure to file annual audited accounts for the year ended 31 March 2023 which were due for filing at Companies House on or before 31 December 2023. Their response is contained in **[REP9-051]** Document 8.177 "Applicant's response to Deadline 8 submissions", page 26. **ID 6 (REP8-068)- Deadline 8 Andrew Mills-Baker submission** The audited accounts of the Applicant for the year ended 31 March 2023 are required to be filed within 9 months of the year end, i.e by 31 December 2023. The accounts have not been filed and are now overdue. This means it is currently not possible to assess the financial performance for the most recently completed business year. The audited accounts for the previous year were filed nearly 6 months late and showed a net loss of £232m on top of a loss for the previous year of £110m. In the context of such losses, and the required funding for such a significant project, late filing of statutory accounts is, in my view, unacceptable. **Luton Rising Response Deadline 9 submission** The Applicant sought and has received approval from Companies House to delay submission of its 2022/23 accounts by up to three months as it was not expected that the accounts would be fully signed off by the auditors in time to meet the 31 December deadline. This year's delay is unrelated to previous late submissions. Delays to publication of accounts are not uncommon and no malpractice should or can be inferred from this. **Further WR Deadline 10** The response from the Applicant is disingenuous. The filing of audited annual accounts at Companies House is a legal requirement and late filing is a criminal offence and the Applicant will receive, at the very least, a fine (which will be doubled as this	The Applicant's audited accounts for the year ended 31 March 2023 were submitted to Companies House on 8 February 2024. On the same day those accounts were submitted into this examination process as committed to by the Applicant at CAH2. The Applicant refutes in the strongest possible terms Mr Mills-Baker's suggestion for the second time that it has acted unlawfully in any way, and refers back to its previous response on this matter in **Applicant's Response to Deadline 8 Submissions [REP9-051],** as helpfully repeated in the left column here, which confirmed that it had sought, and received approval from Companies House for an extension to the statutory deadline for submission of its accounts.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			is the second year of late filing). In some limited situations (such as following an unforeseen event), companies can apply for more time to file accounts, if the filing deadline has not yet passed, however an extension will only be granted if the reasons are exceptional. A delay in the auditors completing their examination within the 9-month timetable is not generally considered as an exceptional circumstance. One of the reasons for having legally enforceable filing deadlines is to provide stakeholders with the opportunity of reviewing and considering business performance and related matters in good time. There is no suggestion of malpractice, but a concern that potentially significant business and financial information, relevant to the DCO application, is not available for review by either the ExA or interested parties. I respectfully request that the ExA require the Applicant to provide the Examination with their annual accounts for the year ended 31 March 2023. If The auditors are not yet in a position to sign off the accounts, then the Applicant should provide drafts. This would be consistent with the practice of the shareholder who made draft accounts for the same period available for public review last summer.	

2.7 GREEN CONTROLLED GROWTH

Table 2.7 provides a response to matters the Applicant considers need to be responded to.

Table 2.7 Applicant's Response to Deadline 10 Submissions

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
ESG and Technical Panels				
1	Buckinghamshire Council	**[REP10-050]** Table 1.1 ID 3	The Council notes the Applicant's response but disputes the suggestion that the funding of new members of the Technical Panels should or could be dealt with at a later date. The Council would suggest that given the certainty secured in the Technical Panel Terms of Reference, regarding the invitation of new members to the Technical Panels, the securing of associated funding should also be given certainty through the inclusion of appropriate wording in the s106 legal agreement. The Council would offer the following wording for insertion in to paragraph 1.1 of Schedule 5 of the draft S106 as a potential solution: The Applicant covenants to make annual payments to CBC, HCC, LBC and NHDC as inaugural members of ESG according to the table in this Schedule (the "Table") to assist them in meeting their obligations arising in relation to the ESG (or any successor body) and / or any related Technical Panel on account of the Authorised	The Applicant acknowledges the position of Buckinghamshire Council, but as the Council has acknowledged, as it is not a signatory to the section 106 agreement, any payments to it could not be secured as part of the section 106 and would need to be secured via a side agreement. It has always been the Applicant's intention to fund time associated with ESG and Technical Panel membership for all members, and to reflect this a new paragraph A2.6.4 has been added into the **GCG Framework Appendix A – ESG Terms of Reference [TR020001/APP/7.08]** and paragraph B2.7.3 into the **GCG Framework Appendix B – Technical Panel Terms of Reference [TR020001/APP/7.08]**. These additions confirm that the Applicant will seek to ensure all members have access to contributions on an equivalent footing, and that the starting presumption is that any sums will reflect contributions provided under the section 106 agreement in connection with the Proposed Development.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			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 obligations mentioned in the Table and any other responsibilities arising from their responsibilities on the ESG and /or Technical Panel. Where any new member of the ESG and / or Technical Panel is established, annual payments will also be made to the additional member(s) according to the table in this Schedule. While the Council would welcome the inclusion of this text in the s106 legal agreement, it considers that this should also be addressed through a side agreement given that the Council is not a named party to the s106 legal agreement.	
2	Dacorum Borough Council, Hertfordshire County Council, North Hertfordshire District Council Luton Borough Council	**[REP10-056]** section. 3 ref. A2.1.14 and A2.1.15 page. 3 **[REP10-059]** section. 3 ref. 2.4.15 page. 1-2	See response to the Green Controlled Growth Explanatory Note (Tracked Change Version) [REP9-021] above. The Hertfordshire Host Authorities welcome the removal of the reference to a *"suitably qualified senior planning professional…"* in paragraph A2.1.14. However, the following paragraph A2.1.15 still refers to *"suitably qualified senior planning professionals will be allowed as substitutes"* which is not in accordance with ESG representative as a competent officer. LBC welcomes the amendment to replace the requirement for the local authority representative to be a 'suitably qualified senior planning professional' with a 'competent officer'. However, LBC is concerned that the reference to 'planning professionals' still appears in the paragraph.	The reference to *"suitably qualified senior planning professionals will be allowed as substitutes"* in paragraph A2.1.15 was amended at Deadline 10 in **Green Controlled Growth Framework Appendix A – ESG Terms of Reference [REP10-027]** for consistency with paragraph A2.1.14.
3	Central Bedfordshire Council, Dacorum Borough Council, Hertfordshire County Council, Luton Borough Council and North Hertfordshire District Council (the 'Host Authorities')	**[REP10-053]** para. 9 page. 10	The Host Authorities are content with the amendments to this requirement that require the local authority officers appointed as members of the ESG to be "competent" and for such competence to be defined by reference to training, knowledge or experience to consider technical reports and use them to support decision making functions related to a planning consent. The Host Authorities remain concerned that the definition requires such persons to be "local authority officers" which could be construed as precluding the appointment of consultants or contractors or other such persons with sufficient knowledge, training, expertise and authority to act appropriately as a member of the ESG on behalf of the Host Authority concerned. Consequently the Host Authorities consider the definition ought to be amended as follows: ""competent officer" means ~~a local authority officer~~ a person appointed by the local authority that has sufficient training and experience or knowledge to consider reports from technical specialists and use these to support a decision-making function linked to a planning consent;"	The Applicant does not object in principle to the amendment sought. However, the Applicant would note that the costs which are secured (and which are proportionate) by reference to officer time. The Applicant considers that officers are able to fufill the functions on the ESG. The Applicant would stress that it is not the intention of the GCG Framework to require or fund the hiring of external consultants in connection with the ESG. The Applicant would ask the Host Authorities to note that payments for such external consultants is not a matter which will affect the payment of sums under the s106 agreements, or any funding provided by way of a side agreement.
Financial Penalties				

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
4	Central Bedfordshire Council, Dacorum Borough Council, Hertfordshire County Council, Luton Borough Council and North Hertfordshire District Council (the 'Host Authorities')	**[REP10-052]** para. 2-2.10	The Host Authorities do not agree that the imposition of a financial sanction to compensate for breach of environmental Limits in such circumstances is unnecessary, unjustified, inappropriate, not in accordance with policy or specific tests for imposition of conditions, being proposed without a clear legal basis or is not appropriate in the context of a decision on a single DCO application ... A financial compensation payment would act as an incentive on the operator to ensure that Mitigation Plans genuinely put forward the best and most likely means of addressing the breach of a Limit within the timetable specified, whilst ensuring that the affected community is compensated in the event that this is not achieved. The financial compensation payment could be payable periodically where a Limit is shown to remain breached (e.g. every 3 months) or annually on a pro rata basis – it would depend on the nature of the breach and the monitoring in place. The Host Authorities are aware of the Applicant's position that such a regime is not required due to the robustness of the GCG Framework. In response to that, the Host Authorities would submit that if that is correct, the risk of a financial compensation payment regime being triggered would be minimal, so putting one in place would be of low risk to the Applicant. As currently drafted, where a Limit is breached the Applicant would be required to implement a Mitigation Plan, but there is no consideration of what might happen should that Mitigation Plan not reduce impacts below those which were assessed as part of EIA, beyond implementation of a further Mitigation Plan. As such, simply by breaching a Limit, a breach of the DCO does not occur, provided efforts are made to mitigate that breach. This means the enforcement regime under the Planning Act 2008 would not apply. The Host Authorities consider that: - A financial compensation payment regime is necessary in order to provide a clear disincentive for the Applicant to breach a Limit, and if it does for it to address the breach and bring operations back within the Limit as soon as possible. Whilst there is an incentive to remain within a Limit to continue to grow, it is clear that the Applicant could benefit significantly from increased growth whilst persisting in breach of a Limit. As such a financial sanction is necessary to ensure that the airport operates within the environmental effects envelope set out in the Environmental Statement.	The Applicant considers that the response provided by the Host Authorities to the **Applicant's Position Paper on Financial Penalties [REP9-058]** is primarily a re-assertion of the Host Authorities' extant position and request. The Applicant therefore restates its case in full that financial penalties are not appropriate, unnecessary, not compliant with policy or guidance, and unprecedented set out therein. Below the Applicant has sought to respond to those elements which, though the Applicant considers it has addressed, are specifically considered for completeness. The Host Authorities set out that they "are aware of the Applicant's position that such a regime is not required due to the robustness of the GCG Framework" but that the Host Authorities would submit that if that is correct, the risk of a financial compensation payment regime being triggered would be minimal, so putting one in place would be of low risk to the Applicant". The Applicant considers this line of argument to be telling because it underscores the point that financial penalties are unnecessary. This suggestion could apply to any condition or requirement, and as the regime is a robust mechanism for addressing the impacts, it is unnecessary to impose an entirely separate and bespoke penalty regime. The specific argument presented directly contradicts the clear precedents cited where there is a robust regime, penalties should not be imposed (e.g., the Applicant cited the Secretary of State's appeal decision records that "if all reasonable endeavours are made to meet [targets] but fail to result in a positive outcome, that would not justify penalty charges"). No consideration appears to have been taken into the highly acute commercial position this would place London Luton Airport in (as compared with any other UK airports) in terms of investment decisions which would have to consider and account for the risk of financial penalties (even if such a prospect is remote). The Host Authorities state that the "enforcement regime would not apply" in relation to the GCG Framework. The GCG Framework secures a legally binding requirement to produce and implement Mitigation Plans which ensure the removal of an exceedance of a Limit as soon as reasonably practicable are prepared. That Mitigation Plan is subject to independent scrutiny and approval. The suggestion draws attention to the fact that the GCG Framework seeks to go beyond what is ordinarily secured. In a conventional planning application, and indeed in all DCOs to date, it is the mitigation which is identified as a result of the impacts assessed in the Environmental Statement that is "secured". There is no binding requirement that the impacts themselves are not exceeded. GCG is specifically designed to supplement that conventional approach by securing the requirement to prepare plans, including "early warnings", to avoid the impact itself being exceeded. This is not a robust argument for why financial penalties are necessary, but in the Applicant's view a clear confirmation that the GCG Framework is unique in seeking to ensure a process for Limits not being exceeded. For the avoidance of doubt, the failure to prepare and submit a Mitigation Plan which secures measures to remove an exceedance as soon as reasonably practicable (and thereafter implement that plan) would be a breach of the DCO and subject to the enforcement provisions.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			- A financial compensation payment regime is relevant to planning and relevant to the development to be consented because it is a necessary component of the framework to ensure that the airport operates within the environmental effects envelope set out in the Environmental Statement, and that the operator cannot benefit from increased growth whilst not complying with the Limits that it has proposed. It is clearly more than 'tangentially related', being the backstop in the event of a persistent breach of a Limit. Without it, there is nothing to disincentivise persistent breaches of the Limits. - A financial compensation payment regime can be put in place which is enforceable and precise. A financial compensation payment regime is reasonable in all other respects. There has been discussion during the Examination as to the need for the benefits of growth to be equitably shared between the Applicant and local communities. The same principle applies in the event of continuing breaches which give rise to on-going adverse effects on communities – those communities should be appropriately compensated. This approach is supported in various aviation industry guidance, such as in the Civil Aviation Authority CAP 1129: Noise Envelopes available at https://publicapps.caa.co.uk/docs/33/CAP%201129%20Noise%20Envelopes.pdf [accessed 5 January 2024]. This states on page 51 that financial compensation to a community fund is one form of appropriate action in the event planning controls are breached. ... The concept of a payment to a community fund to compensate for a breach of environmental limits is entirely consistent with the tests for planning conditions. Sub-section (3) of section 120 of the Planning Act 2008 provides that an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted. It is clear that provision of a financial compensation payment to the Community Fund is a matter relating to or relating to matters ancillary to the development, noting that it is a necessary component of the framework to ensure that the airport operates within the environmental effects envelope set out in the Environmental Statement.	In relation to the planning tests, the Applicant does not consider any new arguments or justification has been provided. The Applicant has explained in detail why the tests fail in the **Applicant's Position Paper on Financial Penalties [REP9-058]**. The sole new matter raised is the misplaced reliance on CAP 1129 (which is a guidance document, not a planning policy). This offers no assistance to the Host Authorities in this context. CAP 1129 specifically suggests that "any enforcement measures should be agreed during the design of the noise envelope and the writing of the associated planning controls. Such measures **could** include fines levied on the airport payable to a community fund, ***or*** a proportionate tightening of the controls in the subsequent measurement period " It goes onto state that "Different actions would be appropriate for different situations, but are likely to include aspects such as: any breaches in an envelope criterion should be rectified such that similar breaches do not occur in a subsequent measurement period [or] financial compensation should be paid to a community fund." The GCG Framework already represents security of tightening and ensuring breaches are rectified. Financial penalties as proposed have not been "agreed". The GCG Framework is therefore compliant with CAP 1129, and the suggestion that a guidance document mandates such financial penalties which are not agreed and in respect of a proposal which includes GCG is not supported by the document. CAP 1129 is also specifically about noise, and so the suggestion that this document could be used to justify the imposition of financial penalties in relation to surface access, air quality and/or greenhouse gas emissions deserves short shrift. Moreover, this reference does nothing to dispute the clear provision of the Planning Policy Guidance quoted by the Applicant, nor does it grapple with the fact that there is no positive support for the use of financial penalties in the Airports National Policy Statement (ANPS), the National Planning Policy Framework (NPPF) nor the Luton Local Plan. The Host Authorities appear to rely exclusively on the ANPS, but fail to acknowledge or refute the position (explained in the Applicant's position statement) that the Government explicitly noted and then rejected the use of financial penalties when consulting and then designating the ANPS. The Applicant further notes that the Host Authorities suggest that payment "could be" set either quarterly or annually. This again underscores the view of the Applicant that the suggested provision fails to meet the tests for planning conditions in being imprecise, either quarterly or annually. This again underscores the view of the Applicant that the suggested provision fails to meet the tests for planning conditions in being imprecise. The Host Authorities further claim that penalties are "relevant to planning and relevant to the development to be consented because it is a necessary component of the framework" but as the Applicant explained, there has been no attempt to provide any sort of framework to contextualise any potential future Limit breaches and allow for a level of sanction that is proportionate to that breach, for example through consideration of the nature and magnitude of the breach or the population affected by it. Moreover, in circumstances

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
				where – for example – a Mitigation Plan is successful in achieving the desired outcome but there are circumstances outside of the operator's control which arise after the Mitigation Plan, the proposed drafting of the dDCO provision would impose a financial penalty whether or not an exceedance was caused by the airport or not. There is no process secured to determine, for example, whether all reasonable steps had in fact been taken before a fine was imposed. On that basis, it cannot be said that it is 'relevant to the development to be consented'. For those reasons, the Host Authorities' submissions on section 120 are also wholly unpersuasive. The Applicant notes that the Host Authorities have made no attempt to respond to the detailed submissions on the specific terms of the Planning Policy Guidance, precedents (both in addressing their suggested precedents, and clear precedents which militate strongly against the use of penalties). No attempt has been made to address the Applicant's position that the imposition of novel penalties regime should be made at a national level, not in the context of a single DCO application applying to a single airport. Nor has an attempt been made to address the specific point that such a penalties regime could hamper attempts to remove exceedances. No attempt has been made to grapple with the fact that specific suggestion of financial penalties was rejected by the Secretary of State in the very recent context of the P19 planning application for London Luton Airport itself. The Host Authorities have therefore given no safe or sound basis for the imposition of financial penalties. Instead, the Host Authorities seem to loosely rely upon a position that "community benefits" is a justification for their approach. The Applicant would note that there is specific authority which suggests that the use of community benefits in such a broad, undefined and unparticularised manner is not consistent with the judgment in Wright, R (on the application of Wright) v Resilient Energy Severndale Ltd & Anor [2019] UKSC 53 in which such an ill-defined concept was deemed not to be relevant or material to planning. Given the proposed provision is untethered to the use of the land (for the reasons set out) and is unnecessary, the Applicant does not consider the misplaced reliance on community benefits justifies the Host Authorities' position.
GCG Review Process				
5	Dacorum Borough Council, Hertfordshire County Council, North Hertfordshire District Council Luton Borough Council	**[REP10-056]** section. 2 ref. 3.3.41 page. 2 **[REP10-059]** section. 3 ref.3.3.41 page. 2	The additional text covered in Section 3.3.41 states that *'As part of the periodic GCG review process set out in Paragraphs 2.2.50 and 2.2.51, consideration should also 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'* This text appears to contradict other parts of the GCG Framework Explanatory Note (including Table 3.7), which sets out the proposal to review GHG Limits and Thresholds to align with GHG policy, including the Jet Zero Strategy.	The Applicant does not consider that the drafting leads to a contradiction. The quoted paragraph in the **GCG Explanatory Note [REP9-020]** is part of a broader section covering GHG Limit Reviews. The preceding paragraphs (3.4.39 and 3.4.40) are clear that a specific review of GHG Limits is to be carried out within three months of government clarifying the scope and pathway to achieving the Jet Zero policy ambition of zero emissions airport operations by 2040. The quoted paragraph (3.4.41) is specifically in relation to additional reviews, which are to be carried out on a five-yearly basis and are covered in more detail at the referenced paragraphs 2.2.50 and 2.2.51. This text requires consideration of current greenhouse gas policies at the time the review is

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			The same wording about "no absolute requirement" appears in relation to the GHG limits review and seems to contradict other parts of the GCG Framework Explanatory Note (including Table 3.7), which sets out the proposal to review GHG Limits and Thresholds to align with GHG policy, including the Jet Zero Strategy.	carried out, outside of the specific review triggered by the government's clarification of the scope and pathway of the Jet Zero commitment. The Applicant has provided justification for the proposed wording in the **Applicant's Response to the Examining Authority's Commentary on the Draft DCO [REP8-036]** in response to suggested amendments to paragraph 24(1).
6	Dacorum Borough Council, Hertfordshire County Council, North Hertfordshire District Council Luton Borough Council	**[REP10-056]** section. 2 ref. 3.3.30 page. 2 **[REP10-059]** section. 3 ref. 3.3.30 page. 2	The Hertfordshire Host Authorities request the following amendment to paragraph 3.3.30, Item D.: *'Whether it is appropriate to revise Limits to align with the new UK legal limits (or interim targets); ~~however, there will be no absolute requirement to do so~~ to ensure that London Luton Airport growth can be sustained within the requirements of the law.'* The clarification on factors that will be taken into account in the air quality limit review is noted. However, the statement that "there will be no absolute requirement" to revise limits to align with the new UK legal limits is inappropriate and would appear to be at odds with the purpose of ensuring that GCG remains up to date, with reviews giving "consideration and where reasonably practicable incorporation of new and emerging best practice in monitoring techniques" (paragraph 2.2.51).	The Applicant would note that this is not a new change, and the wording that the Hertfordshire Host Authorities have requested is removed was introduced at Deadline 5 in the **Green Controlled Growth Explanatory Note [REP5-020].** The Applicant would refer the Hertfordshire Host Authorities to its response to Issue Specific Hearing 5 Action Point 18 in **Applicant's Response to Deadline 4 Hearing Actions [REP4-070]**. It is not considered that this drafting gives rise to any inconsistencies with a requirement to consider new and emerging best practice in monitoring techniques, again noting that there is no absolute requirement to incorporate these into the GCG Framework.

2.8 HEALTH & COMMUNITY

Table 2.8 provides a response to matters the Applicant considers need to be responded to.

Table 2.8 Applicant's Response to Deadline 10 Submissions

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
UKHSA				
1	UK Health Security Agency	**[REP10-066]**	**Terminology** In its Position Statement REP7-075 the Applicant makes multiple references to "complex, long-term epidemiological studies". This type of terminology is not helpful within this context – one can argue that aircraft noise modelling is highly complex, and yet was extensively used to inform the EIA. As noted in previous responses, government and industry-funded studies with similar methodologies to the type of monitoring proposed by UKHSA are currently taking place in England. Relevant specialist expertise exists in the public and private sectors and in academia in the UK to successfully deliver such monitoring.	The Applicant agrees that expertise exists to design and deliver epidemiological studies of health and quality of life outcomes. However, the Applicant considers that there is no case to demonstrate that such studies are likely to inform additional or revised noise mitigation or lead to improved health and quality of life outcomes. The Applicant considers that the value of an epidemiological study at London Luton Airport has not been demonstrated and that such as study would not be proportionate or necessary under the EIA Regulations (2017). Refer to Applicant's Position Statement on Health Monitoring **[REP10-066]**.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
2	UK Health Security Agency	**[REP10-066]**	**Remedial Actions** In its Position Statement REP7-075 the Applicant argues that: "There is no clear scope for remedial action to reduce the effects of noise on quality of life for communities around London Luton Airport. As described above, all practicable measures have been adopted to reduce noise impacts resulting from the Proposed Development." UKHSA disagrees with this conclusion. Monitoring can help inform, refine and evaluate aspects of mitigation such as the eligibility criteria for noise insulation beyond a simple averaged noise metric, the prioritisation of the noise insulation rollout considering socio-demographic factors, the impact of noise insulation on indoor environmental quality and whether building occupants are using alternative ventilation strategies properly, and the effectiveness of other mitigation measures such as community investment fund. The findings can also inform the evidence base for key decisions on future growth linked to the Green Controlled Growth programme.	The Applicant considers that there is no case to demonstrate the value of an epidemiological study, and that such a study is unlikely to inform additional or revised noise mitigation or lead to improved health and quality of life outcomes. Refer to **Applicant's Position Statement on Health Monitoring [REP7-075]**.
3	UK Health Security Agency	**[REP10-066]**	**Relying on national studies** In its Position Statement REP7-075, the Applicant states that: "National studies provide data based on large sample sizes and are representative of the national population, so can be used reliably to inform noise mitigation policy and guidance." Whilst nationally representative surveys are useful to inform national policy principles and guidance, they may not be best suited to detect and investigate the health effects of Luton airport expansion on its local population. Furthermore, by definition, national studies are not designed to deliver the aims and objectives of a monitoring campaign for EIA purposes. UKHSA is not aware of any existing plans or commitments for relevant national studies to take place during the proposed Luton expansion.	The Applicant considers that monitoring effects on quality of life is not proportionate or necessary under the EIA Regulations (2017). The Applicant considers that studies to establish the effects of aviation noise on quality of life (annoyance and sleep disturbance) and the efficacy of noise mitigation are properly and best undertaken at national level, to inform national policy and guidance. Refer to **Applicant's Position Statement on Health Monitoring [REP7-075]**.
4	UK Health Security Agency	**[REP10-066]**	**Sample size** In its Position Statement REP7-075, the Applicant argues that: "The sample size within the areas affected by aircraft noise from London Luton Airport would be small for a health impacts study, which would reduce the likelihood of conclusive results." In its Registration of Interest, UKHSA noted that by 2043 (Phase 2b) there will be • ~38,000 people exposed to daytime aviation noise levels above 51dB LAeq,0700-2300 (~50% of whom are due to the Proposed Development (PD)); and • ~63,000 people exposed to night-time aviation noise levels where adverse effects are known to occur (~46% of whom are due to the PD). Furthermore, according to REP7-072, approximately 8,000 properties may be eligible for noise insulation. UKHSA considers	The Applicant considers that monitoring effects on quality of life is not proportionate or necessary under the EIA Regulations (2017) and that data from such a study is likely to be limited and biased to higher noise exposure. The Applicant considers that studies to establish the effects of aviation noise on quality of life (annoyance and sleep disturbance) and the efficacy of noise mitigation are properly and best undertaken at national level, to inform national policy and guidance. Refer to **Applicant's Position Statement on Health Monitoring [REP7-075].**

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			these to be sufficiently large sample size for a monitoring campaign.	

2.9 NEED CASE (INCLUDES EMPLOYMENT & ECONOMICS, FLEETMIX, FLIGHTPATHS)

Table 2.9 provides a response to matters the Applicant considers need to be responded to.

Table 2.9 Applicant's Response to Deadline 10 Submissions

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
Movement Limits				
1	CSACL for the Host Authorities	**[REP10-051]** para. 2-8 page. 1-3	2. The Applicant is opposed in principle to an annual aircraft movement limit, but argues that if the ExA decides to require one it should be set at 225,000 annual movements. This is significantly higher than its own forecasts which are for 209,410 movements with a throughput of 32 mppa. It advances no quantified reasons for its higher suggestion but makes three largely qualitative points to support its figure. 3. Firstly, it cites "…uncertainty of forecasting…" (Para 4.1.3), but fails to make a case that its forecasts are too low (rather than too high). The Host Authorities have suggested that the Applicant's Passenger ATM forecasts are likely to be over-estimated (REP2-057, Para 2.10): this is discussed further below. 4. Secondly, the Applicant notes (Para 4.1.4) that the Host Authorities consider that there is doubt over the provision of long haul services, first indicated in REP2-057, with Paragraph 3.58 of that document identifying the most likely long haul destinations that might be served from London Luton, with flights to Toronto, Chicago, Washington and Abu Dhabi least likely. Taking this as starting point, these four destinations were forecast by the Applicant to have 2,520 flights per annum at 32 mppa. The table below summarises the key parameters involved in the estimation of the number of net additional short haul flights there would be if there were substitution of short haul passengers for the long haul passengers on these routes. All data used is derived from the Applicant's documents including the Need Case (AS-125), and particularly Table 6.12 and Appendix C. 5. This is the basis for the Host Authorities' estimate that extra flights as a result of fewer long haul services and their replacement by short haul operations would be fewer than 1,000. 6.	The Applicant notes that the calculation set out by CSACL relies in its assumptions as to the appropriate load factor to apply as well as its own assumptions as to long haul growth and which services might or might not operate in future. For the reasons set out in **Response to Chris Smith Aviation Consultancy Limited – Initial Review of DCO Need Case for the Host Authorities [REP2-042]** at section 3.3, the Applicant does not consider that CSACL's assumptions regarding load factor are robust or appropriate to London Luton Airport. Whereas previously CSACL **[REP2-057]** had expressed doubts about the ability of London Luton Airport to attract and sustain any long haul services, for the purpose of considering the appropriateness of an annual aircraft movement limit, it now suggests that only some such movements would not occur then carries out a very mechanistic recalculation of how the same volume of passengers might be carried on short haul aircraft. The Applicant does not consider this approach to defining an ultimate limit on the number of annual aircraft movements to be appropriate or reasonable. Given that the clearly preferred method, by the CAA, of addressing the noise implications of airport growth is noise contour controls as set out in section 2.5 of **Applicant's Position on Noise Contour and Movement Limits [REP9-055]**, the Applicant does not accept that a mechanistic calculation of a maximum annual movement cap is the correct approach to limiting the noise impact of the Proposed Development. Given inevitable uncertainties in the detail of any demand forecast over a 20-25 year period, as is the case with the Proposed Development, it is vital that, if a movement limit is to be adopted as a backstop, it allows flexibility for demand to be met in different ways in future. Whilst the Applicant has put forward what it considers to be a reasonable projection of the future fleet mix and aircraft movement numbers for assessment purposes, a failure to recognise the need to allow for some variation would potentially damage the ability to reach 32 mppa in an efficient manner. This could result in the economic and consumer benefits of the Proposed Development not being delivered but with noise Limits still being reached. This would not be a desirable outcome.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			The third reason given by the Applicant is the possibility that next generation aircraft powered by alternative fuels may have lower seat capacities (Para 4.1.5). It should be noted that such aircraft are in early stages of development as designers and engineers grapple with very challenging technical issues. No commercial prototypes capable of serving the mass markets are currently flying. If there were to be any allowance for the possible lower capacity of such aircraft, it would be reasonable to expect there to be similar allowances in the demand forecasts for differences in capital costs and operating costs. Further aspects that would need to be considered could be apron design if the aircraft were to have different dimensions of length and wingspan. While development of such aircraft is still at an early stage, there have already been questions raised about the re-fuelling time required (for recharging electric batteries or pumping in liquid hydrogen at -253oC) and concern that it would be lengthened. This longer ground time would not only have consequences for aircraft utilisation and airline finances, but also and more critically for London Luton would require more aircraft stands in an already space-constrained apron area. 7. Acknowledgement of a single possible feature of aircraft types when prototypes of commercially viable types suitable for mass-market service have not flown, would be inappropriate for setting an important parameter in the application, without similar acknowledgement of the several other key possible features of such new generation aircraft types. 8. The Host Authorities were advised of a conservative load factor used by the Applicant's adviser in the derivation of Passenger ATMs (REP2-057 Para 4.16 and Table 4.1). Here it was suggested that that a load factor of 91% for the bulk of operations using A320 and B737 family aircraft on short and medium haul routes would be appropriate, rather than the Applicant's figure which has been estimated at 89%. Applying this to the 161,360 annual ATMs of the Applicant's forecast for this large element of demand would reduce the figure by some 3,500 annual ATMs. The table below outlines the steps in this calculation for Passenger ATMs. 9. Drawing together these different adjustments (and accepting the cargo and business aviation movements) suggests some 206,700 total aircraft movements per annum at 32 mppa of per annum.	Hence, the Applicant continues to believe that an annual aircraft movement limit is not appropriate and that the noise Limit proposed under the **Green Controlled Growth Framework [REP10-025]** provides adequate control to ensure that the impacts are mitigated and managed whilst securing the benefits of growth to 32 mppa.
2	CSACL for the Host Authorities	**[REP10-051]** para. 10-15 page. 3-4	10. The assumption made by the Applicant at Para 5.2.4 is incorrect. The exercise conducted for the Host Authorities considers total slots allocated in both the Winter 2023 and the Summer 2024	CSACL mechanistically applies 5% of movements being in the early morning (06:00-07:00) shoulder period to London Luton Airport.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			seasons. It is considered therefore that it provides a valid comparison as it comes from the addition of allocated slots across the whole summer and winter seasons. 11. The table below shows the total slots allocated at the initial co-ordination for the current winter season (as at 9 June 2023) and the forthcoming summer season (as at 17 November 2023) and reflects the pre-season demand from airlines. The data includes details of aircraft size. The majority of movements are by Code C aircraft which categorisation includes B737s and A320s. The nature of traffic at Stansted suggests that most of the slots allocated to the larger aircraft will be for all-cargo operations. 12. From this table it may be seen that over a complete year, airlines at Stansted were allocated 5.0% of their slots in the morning shoulder period. Similar data for London Luton shows the percentage as 5.9%. 13. In 2023, Luton handled some 16 mppa. In contrast, Stansted handled 28 mppa, and is the best analogue that might be used for a London Luton Airport with 32 mppa. The Applicant may protest that Luton has a higher based aircraft demand but its current main carriers, Wizz Air and easyJet, are themselves large airlines with operations throughout Europe: they are able to schedule their fleets to work within the many constraints they face across their networks, and this ability is likely to increase with doubled traffic at Luton in the future. Stansted shows that airlines can make a Shoulder percentage of 5% work. 14. The Joint Host Authorities consider that only strictly necessary movements should be allowed in the morning Shoulder period, and are of the view that only Passenger ATMs should be permitted, with cargo and business aviation movements operating at other times. 15. Application of the 5% figure to the revised annual Passenger ATM figure suggests a morning Shoulder Period limit of 8,720 annual movements	For the reasons set out in section 5.2 of **Applicant's Position on Noise Contour and Movement Limits [REP9-055]**, the Applicant does not consider that it is appropriate to apply the same ratio as derived at Stansted due the different airline mix at London Luton Airport and to allow for reasonable uncertainties as to the future mix. Further information in relation to this topic is provided in ID 3 below.
3	The Harpenden Society	**[REP10-093]** para. 3-5	3. The benefit of an annual movement limit is that it stops airports from controlling the extent to which noise benefits from new technology are shared with the community. Without an annual movement limit, it would be perfectly possible for airport operators to increase the frequency of movements but remain within the noise limits as aircraft become quieter. It's also specifically relevant to Luton airport because of its high level of business aviation, where the current airport operator at the P19 Inquiry noted that private jet movements would increase as commercial aircraft noise lessened (APP-W2.1 Proof of Evidence, Appendix 1	The appropriateness of an annual aircraft movement limit needs to be seen in the overall context of ensuring that the Proposed Development can manage its noise impacts whilst delivering the overall economic benefits. Whilst it is Government policy that the benefits of aircraft becoming quieter should be shared with the community, the most recent *Overarching Aviation Noise Policy Statement* (Ref 3) is clear that this sharing of benefits must be balanced with ensuring that aviation is able to deliver economic and consumer benefits.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			page 11 – LLAOL statement relating to operations at the airport and forecasting): 4The same could be said about cargo flights. 5Furthermore, an annual movement limit will provide confidence that noise limits in periods outside the 92 day summer contour limit will not exceed the 92 day summer period. There is a very real risk of travel patterns changing over the period of the project as a result of climate effects making some destinations unsuitable in the summer period. The annual movement limit will help to prevent peak noise shifting without any means of controlling this. It is a sensible precaution in an uncertain but fast changing global environment.	These benefits do not solely derive from commercial passenger flying. In relation to cargo activity, see **[REP10-069]** response from DHL on the economic and consumer importance of its flying activity at London Luton Airport. Furthermore, there is clear policy support for business aviation activity set out in *Flightpath to the Future* (Ref 4). Whilst the Applicant does not propose to provide additional facilities for business aviation as part of the Proposed Development, the aircraft movement forecasts that have been assessed for noise and other environmental impacts have allowed for continuation of historic levels of such activity. The Applicant does not believe that there is sufficient evidence to suggest that patterns of travel will vary substantially in future sufficient to change the basis of assessing noise using the 92-day summer period, which reflects UK school holiday periods in any event. Should patterns of travel change materially, it is reasonable to expect that the Government would adjust the basis of assessing noise to reflect a change in profile of demand. Furthermore, the Applicant has demonstrated in **Applicant's Response to Issue Specific Hearing 9 Actions 8, 19 and 20 - Quota Count Noise Controls [REP7-077]** how the mechanism of Quota Count budgets provides a link between the 92-day summer Noise Envelope contour area noise controls and the full calendar year.
4	The Harpenden Society	**[REP10-093]** para. 6-9	6. We disagree with LR's assets in 3.1.4 that "any noise Limits should be set with some caution to allow for ongoing uncertainty". Noise limits should be set to achieve certainty, as the ExA noted in its reasoning for preferring the Core Growth Limits. There is little point in a planning system that facilitates uncertainty. 7. Furthermore, the uncertainty is entirely of LR's own making. It's fleet modelling has been based on a made up fleet transition, despite the clarity that the main airlines operating at Luton airport provide in every quarterly report to their shareholders, and an (unevidenced) expectation that the additional (faster) growth would come from non-based airlines whose fleet replacement plans were less well-known (note this faster growth only applies to 6% of the total passenger demand under faster growth so the impact of their unknown renewal plans would be limited anyway). 8. Now LR, to offer some sort of conciliatory position, in the light of the ExA's proposal, is happy to revise its forecasts (despite the Host Authorities cautionary note!). 9. Such flip flopping undermines LR's position that its faster growth noise assessments represent a "reasonable" worst case and the ExA is right to ignore them, particularly where LR is unable to provide any evidenced assessment that faster growth is a realistic prospect.	The use of the Faster Growth Case for the purpose of defining Limits is to ensure that beneficial growth can be delivered earlier, within agreed constraints, if there is demand. Given that the environmental effects of the Faster Growth Case have been assessed as well as the benefits, setting Limits at this level is entirely consistent with the concept of assessing a reasonable worst case for environmental effects and using controls to secure that the effects are limited and no worse than assessed. At the time the original demand forecasts were prepared (Q2 2022), there was considerable uncertainty regarding the anticipated re-fleeting by airlines to new generation aircraft over the remainder of the 2020s. The Faster Growth Case also reflected a more cautious approach to re-fleeting than the Core Case to ensure that the environmental impact assessment was robust and to ensure that worst case impacts were assessed. There is now greater certainty regarding the rate of fleet transition based on the extent of re-fleeting that has already taken place in 2023 and with additional airline orders for new generation types. It was on that basis that the Applicant has accepted that the transition to a new generation fleet is likely to be quicker than originally assessed as a reasonable worst case, albeit there is still a slower transition by 2027 in the Updated Faster Growth Case (67% compared to 69% in the Core Case) to reflect that some of the faster growth would need to come from non-based carriers which are considered less likely to have transitioned to new generation aircraft or to deploy such aircraft to London Luton Airport by that date.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
5	The Harpenden Society	**[REP10-093]** para. 12-16	12 The annual movement limit proposed by the ExA, which is the number of aircraft movements LR say is necessary to deliver 32million passengers per annum (which we are confident is inflated), does not prevent an airline from switching to a newer aircraft, which is likely to have a higher seat capacity. 13 LR's justification for a higher annual movement limit than its modelling indicates is necessary, is set out in REP7-056 page 3 and is to allow "for a variant mix of smaller aircraft types to be deployed in future to deliver 32mppa". LR produced no evidence to support this assertion and, of course, the reality is that any additional movement in a smaller plane would mean the operating efficiency (load factor) on the other aircraft will reduce. Using the additional 15,590 movements LR claim should be allowed and assuming these movements are by Embraer (its range would enable flights to most European destinations) which seats 110 (CSACL average per Table 4.3 of its Initial Report) and a load factor of only 80% 1.4 million passengers would be uplifted. The number of passengers that would fly in the remaining 177,110 commercial movements would be 30.6 million, an average of 172, well below LR's modelled expectation in Figure 6.12 of the Need Case (below), indeed only marginally above the "Without Development" case, and the clear outcome that low cost airline seat availability will have to be capped at a figure little different to what they were achieving in 2019 with much smaller aircraft. It's a nonsense. 14 Furthermore, at 4.1.4 LR say they are "unclear how the Host Authorities…have concluded that these [8,850 long haul aircraft movements] could be replaced with an increase of only 1,000 additional aircraft movements". It seems to us that part of the answer can be found in CSACL's Table 4.3: 15 Total movements in long haul aircraft (787's, A321LR and A350's) are 8,820 and total passengers, at the quoted load factors, 2,122,000. If these passengers were, instead, all to be accommodated on short haul aircraft, at an average seated load of 178 (that's derived from the above table excluding the long haul figures) roughly 11,900 aircraft would be required, that's a maximum of 3,000 more, still well below LR's 15,590 increase. We note that REP8-055 refers on page 19 of 30 that "Should some long haul services not materialise as forecast by York, then CSACL has accepted that they might be substituted by passengers on short haul flights ". The implication, of course, is that CSACL's substitution % is around 1/3rd. LR's failure (or its experts failure) to understand this casts further doubt on the efficacy of its forecasting.	The Applicant notes that the Harpenden Society has presented some further working of what it considers would be an appropriate limit on annual aircraft movements. For the reasons set out above in ID 1 of this response, the Applicant does not accept that adopting such a mechanistic calculation is robust and that, in any event, the imposition of an annual movement limit to control environmental effects is neither required nor effective.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			16 In 4.1.5 LR suggests as justification for a higher annual movements limit that a "possible scenario is that next generation aircraft…may be smaller and have lower seat capacities than those aircraft they replace". Quite apart from the fact that it would have enormous airspace and airport operations (apron and gate availability) implications, Airbus's next generation of aircraft, the ZEROe concept, includes a Turbofan aircraft capable of flying 2,000+ nautical miles carrying up to 200 passengers. With total movements forecast at 209,410, the proposed cap will be more than sufficient to fly 32 million passengers (it may mean some private jet flights need to be curtailed – no-one will see that as a loss particularly if they remain fossil fuel powered).	
6	The Harpenden Society	**[REP10-093]** para. 17-21	17 Whilst we note the discussion in 5.2 comparing Stansted and Luton airport, we have instead looked at the history of early morning shoulder period movements compared to total movements at Luton airport since 2014, the earliest date for which consistent data is available in the Annual Monitoring (and now Sustainability) reports (plus the Quarterly Monitoring Report for Q32023 – which includes 12 month rolling averages). The data table is presented below: 18 The analysis shows that, despite the growth in passenger numbers and total aircraft movements from 2014 to 2019 (and the upheaval of the last few years), the proportion of aircraft movements in the early morning shoulder period has remained constant at 4% throughout – the fact that it has never changed is, in fact, startling. 19 A number of conclusions can be drawn from this analysis: a. LR's claim that the proportion of early morning shoulder period flights to all flights annually is 5.8% is fallacious. b. At no time during this period was the early morning shoulder period limit breached, indeed in the year that it came closest to being breached (2019) it was still 15% adrift. c. Airlines have not been constrained in their ability to meet passenger demand as a result of a lack of availability of early morning shoulder period slots. Apron and runway capacity constraints were not limiting factor eithers. In 2019 there were 39 a ircraft stands in operation plus a further three in the morning peak period (page 169 Need Case), and Figure 7.3 (page 164 Need	The Applicant notes the Harpenden Society's analysis of historic movement patterns at London Luton Airport. However, it is considered more relevant to adopt the ratio applicable to commercial movements as a basis for considering the requirement for movements in the early morning period as explained in **Applicant's Position on Noise Contour and Movement Limits [REP9-055]**. Another way of assessing the requirement for aircraft movements based on the detailed requirements on a peak day as set out in **Need Case Appendix C: Indicative Busy Day Timetable [APP-214]** and extrapolating this to an annual limit by: 1) Applying the 2019 ratio between busy day and annual movements of commercial passenger aircraft within this shoulder period (0.35%) to the future busy day timetable movement figure of 42 required on the busy day in the 06:00-07:00 hour. (It should be noted that that this is not a multiplication of the busy day figure by 365, but a ratio between the busy day and annual levels which allows for daily and seasonal profile variation); 2) The addition of the existing level of business and freight activity from 2019 with a small allowance for further displacement from the night period; and 3) The addition of the 500 freight movements which are then displaced from deep night QC period. The resulting figure, c.12,460, is the figure that has been assessed within the Environmental Statement covering both noise and surface access where daily distributions of activity are relevant.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			Case) shows that runway capacity of 37 between 06:00-07:00 was not fully utilised. 20 It would be fair to conclude that airlines at Luton airport do not need additional early morning shoulder period slots to underpin the airport's growth to 32 million passengers per annum and LR's (unevidenced) conclusions that the unavailability of such slots will limit growth is fallacious. 21 The Host Authorities suggested a limit of 8,829 movements – this would be 4.2% of the maximum movements LR's forecasting predicts. Notwithstanding our reservations about the forecast numbers, the Host Authorities figure is reasonable.	
7	The Harpenden Society	**[REP10-093]** para. 27-31	27 We have to confess to being frustrated with LR's attempts to misrepresent genuine, evidenced alternatives to LR's noise proposals. 28 In this case, our submission at deadline 8 sought to demonstrate that, whilst we understood that low cost airlines fly as many rotations in a day to maximise profits, there was clear evidence that, when faced with operating restrictions, in this case the night period noise limits at Luton airport, low cost airlines were willing to increase their daytime flights in 2019 to meet passenger demand. We didn't say it was a pattern, it was a fact. Therefore, it is reasonable to assume that, faced with limited additional night period slots, low cost airlines would adapt their business models so they could continue to benefit from the passenger growth that LR say is available. We also suggested that private jet flights could easily be reduced to allow more commercial flights as the impact of curtailing private jet flights would have limited, if any, commercial implications 29 Our proposal justified a considered response from LR rather than some spurious made-up response "it is not correct to imply that low cost airlines fly in the daytime to make a profit and do not need to fly at night". We said nothing of the sort. 30 Ironically, LR stated there has been no "fundamental change in the pattern of daytime and night-time flying" which also supports our position that there is no economic necessity for low cost airlines to fly late into the night or early in the morning, low cost airlines will take what is available and decide whether to fly to particular destinations based on the prospective commercial outcome versus that available on other routes. 31 Consequently, the proposal we tabled in our last submission that LR should consider phasing out private jet flights and allocate	The information submitted by the Harpenden Society in **[REP8-087]** does not, as claimed, demonstrate that there were proportionately fewer commercial passenger aircraft movements in the night period in 2019**.** The figures presented include all aircraft movements and fail to consider that, from early 2018, measures were put in place to limit the allocation of ad hoc slots in the night period to business aviation aircraft as set out in **Noise Envelope – Improvements and worked example [REP2-032**, paragraph 3.3.5**]**. As a result, from 2018, the proportion of night movements made up commercial passenger aircraft increased. The conclusion that the Harpenden Society draws from its analysis is incorrect. Optimising the use of their aircraft is key to the low cost airline model and this inevitably involves some degree of aircraft returning to their bases in the early part of the night period so as to make effective use of aircraft on the next day.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			those to commercial aircraft remains a viable alternative strategy to reduce the noise experienced by those living under the flight path. We acknowledge that there is a role for business aviation at the airport so we're not suggesting all private jets to be banned (for noise reasons, we certainly believe they should be reduced to the absolute minimum for greenhouse gas reasons) but a fair and appropriate reduction to provide noise benefit to the local community is justified and should be a requirement in the DCO.	
8	LADACAN	**[REP10-079]** Section 3 page. 12-13	4.1.1 We find the Applicant's arguments bizarre in the following respects: a) airline refleeting decisions will be unaffected by whether or not LLA has a movement cap – as the Applicant has previously suggested, airlines will move their business to suit their commercial objectives. b) whilst the Applicant may prefer simply a noise contour limit, its Noise Envelope Design Group did not, for good reasons which it documented. c) the Applicant states that a noise contour Limit addresses the effects of growth: it does not. It is one means, but an incomplete means as we have previously indicated, because it gives no information about numbers of aircraft noise events, no information about the mix of louder or less loud noise events, and no granularity of information about when they occur. d) the Applicant only has regard to what it describes as beneficial growth, and takes little or no regard in this position paper or elsewhere to the impacts of harmful growth particularly where that causes additional flights which cause health harms in the sensitive ate evening, night and early morning periods. 4.1.2 The annual limit proposed by the Applicant should instead be the Core Growth limit. 4.1.3 The Applicant is acknowledging here the inherent uncertainty in fleet mix forecasting, yet has dismissed previous suggestions by the Harpenden Society (for example) that the fleet forecasts may not match the future fleet makeup of major airlines using LLA. 4.1.5 The Applicant proposes that an equally possible scenario is next generation aircraft being smaller with lower seat capacities. In that scenario, many more slots would be required, and flight times may encroach further into the night period due to the runway capacity limits being reached in the early morning shoulder departure period. This underlines the need for more protection of the sensitive shoulder and night periods, not less. That is not to say additional aircraft couldn't be accommodated during the day, since of course the smaller aircraft would likely	See responses to ID 3-ID 6 above.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			have reduced range and therefore not be flying such long stages. However, the Applicant has failed to evidence whether the use of such aircraft, in potentially greater numbers than new generation aircraft, would actually reduce emissions, since the landing and takeoff cycle is emissions intensive so the more flights the worse the emissions budget is likely to be. 5.1.1 A morning shoulder cap of 7,000 movements annually is already in place as a result of Project Curium for the purpose of protecting residential amenity. The 8-hour contour limit provides no granularity of control during the sensitive night period, as indicated under 4.1.1(c) above. The unfettered freedom for airlines to respond to the market during the night period would clearly have an adverse impact on noise and health which a contour area simply cannot and does not control, and does not constitute sustainable nor responsible growth. The Applicant has already proposed to increase night flights by 70% and this is regarded by communities as unacceptable. 5.1.3 LADACAN's proposal was measured, conciliatory and based on evidence from consultation. It is improper for the Applicant to describe is as arbitrary: it reflects the approach which the NEDG should have taken, namely to start by agreeing the scope of the noise impacts. 5.2.2 The Applicant provides no evidence to substantiate its assertion that the proposal to cap the number of flights in the noise-sensitive shoulder periods would fundamentally constrain growth. It merely speculates in 5.2.9 - 5.2.12 based on current airlines current models, whilst having also acknowledged as indicated above that there is uncertainty in forecasting. 5.2.6 The Applicant seeks to justify its position by referring to the claimed importance of business flights, yet its proposal foresees the elimination of business aviation at LLA and the transfer of business slots to commercial airlines.	
Fleet Mix				
9	Michael Reddington	**[REP10-080]** Table. 1 ID. 1 page. 2	I commented in REP6‑153 'Need Case' that the ATM figures for the 'DM' case over the whole of the Project were greater than they should be given newer, larger aircraft. I expected the Need Case to be amended appropriately or at least elicited a response from the Applicant. REP6‑153 is reproduced in Appendix B for information.	The Applicant responded to this point in **Applicant's Response to Deadline 6 Submissions [REP7-063]** and explained why it did not consider any adjustment to the projections as set out in the **Need Case [APP-125]** to be required.
Employment				
10	Stop Luton Airport Expansion	**[REP10-088]** para. 2 page. 1	Please break down jobs at the airport by industry sector, average wage and by other corresponding like for like jobs at other airports. Example, a similar retail clothes shop at all other uk airports (i.e. Stansted, Heathrow, Gatwick, Bristol, Leeds-Bradford etc, similar luggage shops, similar duty-free shops etc), working similar shifts etc. The 000715-5.02 Environmental Statement Appendix 11.1 Oxford Economics The Economic	The Applicant does not have detailed information regarding employment and wages by category of employment at other airports. Nor is information available for individual activities or companies at the airport. As explained at paragraph 2.2 of the Oxford Economics Report at **ES Appendix 11.1 [APP-079]**, the wages were estimated based on average sectoral wages in the local area.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			Impact of London Luton Airport (2022) suggests that York Aviation can provide this information. Please explain the meaning and difference between the wholesale and retail industries directly at the airport? Please explain how the numbers used, differ between each? Please identify the 'Repair of Motor Vehicles and Motorcycles' industries located directly at the airport?	'Wholesale and retail' is one of several standard industrial classifications used in the economic assessment to categorise employment, as explained in Appendix 2 of the Oxford Economics Report. The data used to identify the number of jobs at the airport is from the Government's Inter-Departmental Business Register (IDBR) and is subject to confidentiality requirements in terms of the extent to which a more detailed breakdown can be provided. The reference to 'Repair of motor vehicles and motorcycles' appears to be a reference to the Halcrow analysis from 2012 referred in the **Applicant's response to Issue Specific Hearing 2 Actions 5 and 6: Past Employment Estimates [REP4-075]**. The Applicant has no information regarding what this referred to.
11	Stop Luton Airport Expansion	**[REP10-088]** page. 1-2	Note that 000715-5.02 Environmental Statement Appendix 11.1 Oxford Economics The Economic Impact of London Luton Airport (2022) attempts to provide this information but is out of date and only provides a high-level breakdown. Same for the information provided in 002192-8.89 Applicant's Response to Issue Specific Hearing 2 Action 5 and 6 - Past Employment Estimates- Appendices E to J, Sources BRES (2011), Experian (2012), erian (2012) and Halcrow (2012) tables. a. Please break this down by wage band and number of workers in each band and by those working in head office functions, those working directly at the airport, those indirect and those induced, and those not. Split by each development phase. Figure 2.2. suggests that this information is available. b. Please provide a break down by full time workers, part time workers, split shift workers, temporary workers, workers working for a supplier and other. Define other. Split by each development phase. c. Please provide a breakdown of home workers and in office or location workers for both a. and b. Split by each development phase.	Information at the level of granularity requested is not available. As explained in response to ID 10 above, the wages are estimated by reference to average sectoral wages in the local area. Similarly, information is not available in the requested level of detail for the future development phases.
12	Jeremy Young	**[REP10-075]**	Throughout these meetings , when the increase in employment was raised , no reference to AI/automation in the search for increased productivity and profit and the ensuing loss of jobs. In a recent study by the investment bank Goldman Sachs , it was estimated that more than 20% of the work in the world could be automated by AI by 2030, with the Western World being the most susceptible. It would believe therefore that it is incumbent on the Applicant , to, if he has not already done so ,produce and publish an impact statement of the affect AI will have on the employment prospect for the towns people of Luton if the expansion is allowed to proceed.	Future productivity effects have been taken into account in producing the employment estimates in the Oxford Economics Report [**APP-079**, Appendix 1]. Many of the jobs at the airport are direct customer facing jobs and would be less amenable to replacement by AI.

2.10 NOISE & VIBRATION

Table 2.10 provides a response to matters the Applicant considers need to be responded to.

Table 2.10 Applicant's Response to Deadline 10 Submissions

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
Host Local Authorities				
1	Luton Borough Council Dacorum Borough Council, Hertfordshire County Council, North Hertfordshire District Council	**[REP10-059]** page. 6 **[REP10-056]** page. 8	The Applicant's on Noise Contour and Movement Limits [REP9-055] sets out the results of the 'Updated Faster Growth (UFG)' case, which is produced by the Applicant having "revisited the fleet transition assumptions in the light of more recent orders for new generation aircraft by airlines including easyJet and the trends of aircraft modernisation seen at the airport during 2023 and anticipated in 2024" [paragraph 3.1.6]. No updated Core Case is provided, which presumably would also decrease by the same or a similar percentage, due to the increased new-generation aircraft applying to both the UFG and Core Case scenarios. An updated Core Case would then be expected to lead to fewer properties again being exposed to above-SOAEL noise levels, with the Host Authorities agreeing with the ExA's approach "to avoid additional effects above SOAEL" [PD-018]. The Applicant's reasoning for using the UFG Case over the Core Case is that there is uncertainty in the forecasting and the Applicant is seeking to move this risk on to the local communities, rather than taking this risk on themselves. This reasoning, as set out in, for example, paragraph 3.1.3 of the Applicant's on Noise Contour and Movement Limits [REP9-055], is not acceptable. Such a passing of risk also does not apply the same incentive for airlines to re-fleet as fast as possible to enable growth as soon as possible; the benefits are already available due to the increased flexibility provided in the increased limits. The Applicant should be applying limits to what they are applying for, i.e. the Core Case. By setting noise limits using the Core Case, as the ExA is minded, the same airport expansion is brought about, but in a more sustainable manner with noise effects that have been limited and reduced, where possible. It is not deemed necessary to cover again the same aviation policy points raised in the Post-Hearing Submissions to Issue Specific Hearing 3 [REP3-094], but LBC simply notes that the ISH3 submissions take the same position as is taken here.	The Host Authorities are incorrect that new information about fleet orders gives rise to a need to revisit the Core Case fleet forecasts, rather that we have more confidence now that they are attainable in terms of fleet transition. The Updated Faster Growth case represented an acknowledgement that the achievability of the fleet transition during the remainder of the 2020s was now more certain and that it is no longer seen as appropriate to set the Limits for Phase 1 by reference to a fleet transition which assumed a high risk of the Core Case fleet transition not being attained. The Updated Faster Growth Case now allows for the potential for faster growth in the number of aircraft movements but continues to assume that these additional movements by non-based aircraft are significantly less likely to be by new generation aircraft by 2027, hence the 67% transition of the fleet assumed compared to the Core Case. In relation to forecasting uncertainty, the Host Authorities (through CSACL) have set out a position regarding the overall demand forecasts based entirely on claimed downside risks **[REP4-162**, **REP5-050**, **REP9-064]**. This would transfer all of the risk not just to the Applicant but also to those communities in need of the economic opportunities that the Proposed Development will bring. The Applicant seeks to ensure, through the use of the Faster Growth Case, that the benefits of the Proposed Development are realised at the earliest opportunity. The impact of this, based on the original and Updated Faster Growth Cases, has been fully assessed in **Chapter 16** of the **ES [REP9-011]** and **Applicant's Position on Noise Contour and Movement Limits [REP9-055]** respectively. By adopting this Case as the basis for setting the Limits, there is a symmetry of benefits and risks as if the noise impact is greater than the economic and employment benefits are also greater. This creates an appropriate balance in compliance with the Overarching Noise Policy Statement. It is not the case that the Applicant is applying for the Core Case. The Applicant is applying for growth to 32mppa and in doing so has undertaken environmental assessments using different rates of growth (Slower, Core and Faster) as set out in the **Need Case [AS-125]** and updated (for the Faster Growth scenario) in **Applicant's Position on Noise Contour and Movement Limits [REP9-055]**. These different rates of growth allow the reasonable worst-case environmental outcomes to be assessed, and then the Limits secure that those effects will not be exceeded. The Applicant's position on the Proposed Development's compliance with the particular aspects of aviation noise policy raised by the Host Authorities is

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
				outlined in **Table 9.2** of the **Applicant's Closing Submissions [TR020001/APP/8.191]**.
2	Luton Borough Council Dacorum Borough Council, Hertfordshire County Council, North Hertfordshire District Council	**[REP10-059]** page. 7-8 **[REP10-056]** page. 8-9	So far as the inclusion of a movement limit is concerned, the Applicant's position set out in Section 4 is contradictory. It is stated that such a limit is not required as it is not strictly correlated with population noise exposure. It is then argued, however, that if a limit were included it should be no less than 225,000 movements rather than the figure on which all environmental assessments set out in the Environmental Statement (ES) have been based, namely 209,410. This argument suffers from the same flaw as that which seeks to use the Faster Growth Case, or Updated Faster Growth Case, to set noise limits rather than the Core Case. The passing of risk to the local community which should properly be borne by the Applicant or future airport operator is not acceptable. It would be possible to operate 225,000 movements within a noise limit set for 209,410 aircraft movements if each of the higher number of movements were 0.3dB quieter. This difference in level is imperceptible to the human ear, meaning that the local community would experience 7% (or so) more flights that were perceptibly just as noisy as if the ES number had been maintained as a limit. No consideration has been given to the effect on overflights which are assessed as a supplementary metric in the ES, with results reported for all assessment years. These would all need to be revised upwards if the actual movements were 225,000 rather than 209,410. It is not appropriate to permit operations at a level that have not been fully tested in the ES, as no addendum overflight information has been provided along with that proposed movement limit.	The Applicant's position is not contradictory. The Applicant's position has always been clear that movement limits are not appropriate. However, it has been asked to provide figures for such limits in response to **Examining Authority's Further Written Questions (ExQ2) [PD-015]** and the figures are therefore provided in response to these questions and without prejudice to the position that such limits are not appropriate. Passing risks to local communities is not a relevant consideration, as the Applicant has demonstrated that movement numbers do not correlate with noise effects on health and quality of life, provided that the noise contour area Limits are in force to control noise. The Host Authorities' own example demonstrates the issues with movement limits and that they do not correlate well with noise effects. As stated in **Chapter 16** of the **ES [REP9-011]**, overflights are a supplementary metric and should not be used to determined noise impacts. This is reflected by the Civil Aviation Authority (the creators of the overflight metric) who state *"It is important to stress that the overflight metric does not reflect noise impacts; it contains no noise information but has been developed to recognise both that Government policy on airspace refers to overflights and that communities can find the information useful."* (Ref 5) The Noise Envelope Limits in the **Green Controlled Growth Framework [REP10-025]** will restrict noise effects to those assessed in the ES and it is therefore not necessary to consider overflights further than has already been done in **Chapter 16** of the **ES [REP9-011]**.
LADACAN				
3	LADACAN	**[REP10-079]** section. 1 ID. 5 page. 4	We are unclear why the Applicant only used 92-day data from the fixed monitors to validate the contour model, when hitherto Bickerdike Allen has used annual data to validate the INM model, therefore we tested the LASmax data for the 2019 full year against the Applicant's data	This issue has already been responded to in the **Applicant's response to Deadline 9 submissions [REP10-045]**, ID 2 in Table 2.7.
4	LADACAN	**[REP10-079]** section. 2 page. 8, 10, 11	The centre-of-swathe value of 23° is well below what the CAA considers reliable in noise measurement. The Applicant chose not to include the LTN_SLTN results in the validation due to the anomalies. We have now explained the cause of the consistent over-prediction – essentially it results from under-measurement of the noise impacts. However the Applicant has included the LTN_BG measurements even though they are affected by some of these issues on Arrivals and may also be unreliable.	LADACAN have provided a reference to the CAA's 'Definition of overflight' (Ref 6) in the context of "what the CAA considers reliable in noise measurement". This document refers to elevation angles in the context of what is considered an 'overflight' and the point at which lateral attenuation increases dramatically, but this is not the same as the CAA saying that noise cannot be reliably measured beyond certain angles. Nowhere in this document does the CAA quantify elevation angles in the context of reliable noise measurement. The use of noise data from the LTN_SLTN was queried in LADACAN's Deadline 1 Written Representations **[AS-150]**, which was responded to at Deadline 2 in **Applicant's Response to Written Representations made by**

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			As it is, due to the rush with which the Applicant has approach this key exercise, the noise monitoring is substandard and the noise modelling is not able to be relied on with adequate certainty. We invite the ExA to take the view that in the absence of adequate information it is inappropriate for the Applicant simply to have omitted LTN_SLTN data from the validation, and that as a result it is quite possible that the model is over-conservative, over-predicting, and hence the Limits are over-lenient.	**Non-Statutory Organisations at Deadline 1 [REP2-037]**. It is refuted that there was any 'rush' in the noise model validation process. The model was first developed for 2019 statutory consultation and was continually developed up to submission of the ES in 2023. A substantial amount of work went into the validation process, as detailed in **Appendix 16.1** of the **ES [REP9-017]**. The approach adopted in the air noise model validation process has been subject to extensive technical scrutiny and agreed as appropriate in the Host Authority's SoCG **[TR020001/APP/8.13-8.17]**. LADACAN has helpfully identified why there may be inconsistencies with noise data logged at the LTN_SLTN location compared to noise predictions by identifying "*…line of sight from the noise monitor to both arriving and departing aircraft was in the most part blocked by a substantial building of which the noise model would have no knowledge*" **[REP10-079]**. Whilst it also highlights that there may be inconsistencies with noise data logged at the LTN_BG location, the average difference in predicted noise levels and measured noise levels for all aircraft was +1.4 dB, which is not outside a margin of error that would suggest that there is an obvious issue with the monitoring location. For context, the average difference in predicted noise levels and measured noise levels for all aircraft at LTN_SLTN was +4.0 dB, which is large enough to suggest that there may be an issue with the data from the location. LADACAN identify issues with screening at the LTN_SLTN, which support the decision not to include the location then defining corrections to be applied to aircraft. These same issues were not identified at the LTN_BG location. The Applicant, LADACAN and the Suono (on behalf of the Host Authorities) met on 8 February 2024 to discuss these issues and LADACAN's concerns about input data for the noise model validation process as raised previously. A summary of the outcomes of this discussion is provided in **Table 9.1** of the **Applicant's Closing Submissions [TR020001/APP/8.191].**
The Harpenden Society				
5	The Harpenden Society	**[REP10-093]** para. 10-11	"Securing" Noise Limits (section 3.3) 10 So far as we understand the position, the Department of Transport is responsible for setting the noise limits at the designated airports, including Luton, given the size it is proposing to grow to, is a sensible and appropriate response. 11 Furthermore, as the ExA is well aware, no community group believes that ultimate enforcement of the controls in the DCO should be left to a conflicted local planning authority.	The Department of Transport (DfT) is responsible for setting certain night-noise controls at the designated airports (Heathrow, Gatwick and Stansted). This does not include Luton Airport which is not a designated airport. The night noise controls set by the DfT for the designated airports are movement limits and quota count limits in the Night Quota Period only (23:30 – 06:00). The DfT controls do not extend to contour area Limits or any other form of noise control outside of the Night Quota Period. Enforcement of the controls in the DCO are not left to any single local planning authority (and it is not agreed that any local planning authority is conflicted, see **Roles and Responsibilities of Luton Borough Council [REP1-018]**). Firstly, the **Green Controlled Growth Framework [TR020001/APP/7.08]** has been designed to be 'self-enforcing', with the GCG process designed to require action by the airport operator to address any exceedances of Limits, including those established through the Noise Envelope.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
				The **Green Controlled Growth Explanatory Note [TR020001/APP/7.07]** then sets out the enforcement mechanisms available where the GCG Framework process is not complied with. As this sets out, the Environmental Scrutiny Group (ESG) should first provide formal notice to the airport operator that they consider a breach has taken place and attempt to resolve this issue directly with the airport operator prior to formal enforcement action being triggered. Where this does not resolve a breach of process then the ESG may initiate enforcement action. The mechanism by which statutory planning enforcement takes place for development consent orders is set out in Part 8 of the Planning Act 2008 (Ref 7). GCG will not modify this existing statutory enforcement regime. It should be noted that the "relevant planning authority" (as defined in s173 of the Planning Act 2008) is able to take a number of steps. The "relevant planning authority" as defined by the statutory enforcement regime will be Luton Borough Council. However, it is also open for other planning authorities to bring action either through a private prosecution of an offence under section 161, or potentially by way of injunction under section 171 of the Planning Act 2008. It is also proposed that an additional, supplemental process is enabled under the **draft DCO [REP10-003]** in relation to enforcement. This again is not intended to modify or prejudice the enforcement provisions in the Planning Act 2008 but provide additional safeguards to prevent breaches of the GCG framework. In particular, provisions in the DCO require LBC to notify the ESG, neighbouring local authorities and the airport operator whether it intends to pursue formal enforcement action and provide reasons for its decision. As with any such decision (or failure to take a decision) by a public body, LBC's response could be subject to potential judicial review. This supplemental process therefore provides additional transparency around enforcement which does not form part of the existing statutory enforcement processes.
6	The Harpenden Society	**[REP10-093]** para. 32	32 LR claim in their response to our point "a." that our statement "Considerably more people are affected by noise at Luton compared to other London airports at the same contour levels" is not true. They refer the ExA to Table 1 in the CAA Survey of Noise Attitudes which, of course, refers to data collected in 2012 or 2013 a period long before Luton's and other London airports substantial growth. It is unacceptable that LR thinks it can present data a decade old as a credible justification for its position.	The reference is appropriate in response to the point raised and the Applicant is not aware of any more recent reference that provides a direct comparison of noise contours using the same year and same noise level thresholds. The trend in growth since 2013 has not changed the relative size of noise contour areas to the extent that more people are affected by Luton than the other London airports as the Harpenden Society suggests.
7	The Harpenden Society	**[REP10-093]** para. 35	35 In response to our point "b." LR have, at no time, addressed the fact that the day and night-time contours even at the end of this project will exceed the equivalent contours provided for in the P19 permission. Unless, the noise contours reduce below the P19 contours, there is no community benefit whatsoever from the DCO, indeed communities are considerably worse off than they would be if there was no expansion.	The Applicant has addressed this point many times and has consistently acknowledged that the daytime and night-time contour areas will be larger than those of the P19 long term limits (which are associated with an airport operating at 19mppa and without any of the additional benefits associated with growth to 32mppa). See for example Insets 1 and 2 of **Comparison of consented and proposed operational noise controls [REP5-014]** which makes the direct comparison that Harpenden Society claim has not been

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
				made. The effects of noise increases compared to the situation without expansion is fully assessed in **Chapter 16** of the **ES [REP9-011]**.
Michael Reddington				
8	Michael Reddington		Could the Applicant please advise what assumptions were made in relation to Wigmore Lane – is it assumed that traffic towards Terminal 2 will use the Stopsley Wat Bypass, Vauxhall Way and Crawley Green Road?	It is not the intention that traffic travelling towards the proposed Terminal 2 would be directed to travel along Wigmore Lane. It would be the intention to signpost vehicles approaching from the north / north-east along Vauxhall Way, Airport Way and the Airport Access Road (AAR), rather than local access roads.
9	Michael Reddington	**[REP10-084]** Table. 1 ID. 2 page. 3	Can the Applicant please confirm what ATM figures were used for comparison of the 'DM' scenario with 'DS'.	The aircraft movements using in the Do-Minimum and Do-Something scenarios are provided in the **Need Case [AS-125]**.
10	Michael Reddington	**[REP10-084]** Table. 1 ID. 4 page. 3	Can the Applicant please explain how "total adverse effects of noise are counterbalanced by increased economic and consumer benefit" as this seems to be a straightforward statement of economic comparison. How else ids this to be interpreted?...'x' number of additional dB is equivalent to 'y' number of £millions?	The Applicant's approach and assessment of the overall planning balance, which considers adverse effects of noise (as well as other environmental effects) and socio-economic and consumer benefits, is set out in the **Planning Statement [REP5-016]**.
11	Michael Reddington	**[REP10-084]** Table. 2 ID. 5 page. 4	The point being made here is that using a 2019 baseline from which to compare the impacts or benefits of 'DS' is fatuous, since by 2019 LLAOL was serving 18mppa ten years before the alleged benefits of smaller noise contours were in place. In truth the DCO should be using 2028 contours as the baseline from which to determine impacts.	As well as comparing to a historic baseline, the noise assessment compares the noise level in each year to a 'Do-Minimum' in each assessment year, i.e. a 2027, 2039 and 2043 baseline. This is explained in Section 6.2 of the **Applicant's Post Hearing Submission – Issue Specific Hearing 3 [REP3-050]**.
12	Michael Reddington	**[REP10-084]** Table. 2 ID. 7 page. 5	The Applicant failed to respond to the following comments submitted in [REP8 - 078] paragraphs 4.13.8 to 4.13.12	It is not the case that the Applicant has failed to respond. Paragraph 1.1.2 of **Applicant's Response to Deadline 8 Submissions [REP9-051]** is clear that *"the Applicant has only provided responses to points of clarification or new matters raised in submissions, i.e., the Applicant has not responded to matters that it considers have already been addressed in previous submissions."* As such, paragraphs 4.13.8 to 4.13.12 of **[REP8-078]** were not responded to as they are points that have been previously raised and responded to, see for example **Applicant's Response to Deadline 2 Submissions – Appendix B [REP3-061]** and **Applicant's Response to Deadline 3 Submission by Michael P Reddington [REP5-054]**.
13	Michael Reddington	**[REP10-084]** Table. 3 ID. 10 page. 9	Paragraph states: *"Relative tranquillity* *The perception of relative tranquillity is dependent on the sensitivity of the receptor, its use or activity and other considerations such as the visual sense of relative tranquillity. The assessment of relative tranquillity for the Proposed Development is a consideration of an existing noise source (aircraft noise) where the number of aircraft movements in areas currently exposed to aircraft noise would change, but the location exposed to aircraft noise would not change. Furthermore, the overall noise assessment in this chapter shows a reduction in*	As noted in ID 11 of this table, as well as comparing to a historic baseline, the noise assessment compares the noise level in each year to a 'Do-Minimum' in each assessment year, i.e. a 2027, 2039 and 2043 baseline. This also applies to the consideration of relative tranquillity which considers the noise change in a given year (i.e. in 2027 with and without the Proposed Development). This is explained in Section 6.2 of the **Applicant's Post Hearing Submission – Issue Specific Hearing 3[REP3-050]**.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			noise contour areas (day and night) compared to the 2019 Actuals baseline. In other words, the Proposed Development would not give rise to aircraft noise becoming audible and intrusive for the first time at any location within the study area. Impacts on relative tranquillity are therefore primarily associated with absolute noise level exposure and noise change (to areas already exposed) as a result of the Proposed Development." These are fine words but meaningless, compounded by the fatuous comparison between 2019 noise contours and 'DS' contours. We have repeatedly stated that 2019 saw 18mppa but without any community noise benefit - this was not going to be reached completely unl 2028 (and did not allow for Covid !).The Community was already being short - changed by the Applicants and LLAOL. What the Applicant is saying is that if you were subject to loud aircraft noise already, - irrespective of whether you complained bitterly - then this little old DCO would not bother you too much since your 'relative' tranquillity due to mismanagement by LBC, LR and LLAOL was already pretty low. The Applicant uses exaggerated noise levels from 2019 is as a baseline when should have been using 2028 noise contours as a baseline because Project Curium by 2019 has delivered more flights and more noise, not the community benefit that was promised.	
14	Michael Reddington	**[REP10-084]** Table. 3 ID. 13-14 page. 10	Additional mitigation and compensation measures does not mention ground noise compensation Monitoring does not mention ground noise compensation.	This comment is referring to **Chapter 16** of the **ES [REP9-011]**. This chapter does not mention the ground noise insulations scheme as it was not part of the Proposed Development at the time of the ES noise assessment, as such the benefit of the scheme is not taken into account in the assessment and it is not mentioned in the assessment documents. However, **Appendix 16.2** of the **ES [REP10-019]** which provides further explanation of the mitigation and compensation proposals relevant for noise has been updated to include reference to the ground noise insulation scheme

2.11 SECTION 106 AGREEMENT

Table 2.11 provides a response to matters the Applicant considers need to be responded to.

Table 2.11 Applicant's Response to Deadline 10 Submissions

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
1	Buckinghamshire Council	**[REP10-050]** Table. 1.1 ID. 3	The Council notes the Applicant's response but disputes the suggestion that the funding of new members of the Technical Panels should or could be dealt with at a later date.	The Applicant has, in order to provide comfort on this issue, inserted wording into the Terms of Reference which confirms that members of the ESG/TP are proposed to, subject to agreement, have contributions paid in respect of officer time associated with the attendance of ESG/TP meetings.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			The Council would suggest that given the certainty secured in the Technical Panel Terms of Reference, regarding the invitation of new members to the Technical Panels, the securing of associated funding should also be given certainty through the inclusion of appropriate wording in the s106 legal agreement. The Council would offer the following wording for insertion in to paragraph 1.1 of Schedule 5 of the draft S106 as a potential solution: The Applicant covenants to make annual payments to CBC, HCC, LBC and NHDC as inaugural members of ESG according to the table in this Schedule (the "Table") to assist them in meeting their obligations arising in relation to the ESG (or any successor body) and / or 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 obligations mentioned in the Table and any other responsibilities arising from their responsibilities on the ESG and /or Technical Panel. Where any new member of the ESG and / or Technical Panel is established, annual payments will also be made to the additional member(s) according to the table in this Schedule. While the Council would welcome the inclusion of this text in the s106 legal agreement, it considers that this should also be addressed through a side agreement given that the Council is not a named party to the s106 legal agreement	The amounts payable are to be agreed between the parties, but the Applicant would seek to ensure all members have access to contributions on an equivalent footing (and the starting presumption is that any rates will reflect contributions provided under the section 106 agreement in connection with the Proposed Development). Should any prospective members be included as part of a review, or otherwise, this legally secures an obligation to seek payments for such officer time are agreed. The Applicant does not consider it appropriate to amend the section 106 agreement to address matters which relate to parties who are not themselves a party to the section 106 agreement.
2	Buckinghamshire Council	**[REP10-050]** Table. 1.1 ID. 4	The Bus and Coach Strategy has been updated at D8 to include the consideration of an hourly X61 service and a high speed route between Aylesbury and the Airport for discussion by the ATF Steering Group (SoCG ID 3.2.5 and 3.2.6). The updated S106 does name BC as a prospective member of the ATF Steering Group and prospective recipient of the RIF, but it fails to secure membership in perpetuity. Moreover, the Bus & Coach Study is not currently referenced in the Framework Travel Plan (D8). In relation to the TRIMMA the ATF Steering Group membership point remains as above. BC does not take issue over the categorisation of the Ivinghoe Junction as potential Type 2 mitigation, so reference to SoCG ID: 3.2.1d is irrelevant. The Applicant's response fails to address BC's concerns regarding the underfunding of the RIF, or the fact that the RIF is not index-linked. With regard to the relevant highway authority point BC is not asking to be a RHA as defined by the DCO, but rather seeking for the term in the s106 to be defined so as to include BC in the list of potential highway authorities 'relevant' to type 2 mitigation under the TRIMMA and RIF. Notwithstanding this fact the Council acknowledges the updates to paragraph 17 of the draft S106 agreement regarding Rights of Third Parties which goes some way to resolving part of this issue.	Responses to these points have been picked up in the final **SoCG between London Luton Airport Limited and Buckinghamshire Council [TR020001/APP/8.18]** and are not repeated here.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			Whilst the definition of 'Local Area' and the associated obligation have been lifted from the P19 S106, see link - TR020001-001868-Luton Borough Council - s106-Agreement.pdf (planninginspectorate.gov.uk), the local procurement protocol is an appendix of the wider ETS which states that "The key purpose of the ETS is to ensure that, as many of the jobs and economic opportunities generated by the Proposed Development as possible, go to the residents of Luton and the "ETS Study Area" (see 1.2.5 below) because they will have the skills and training required to do the jobs well and to help mitigate some of the other impacts on the ETS Study Area resulting from expansion." Given that Buckinghamshire as a whole is identified within the study area, BC consider that restricting the definition to Aylesbury Vale is contradictory. Moreover, the P19 S106 was agreed prior to the formation of Buckinghamshire Council as a Unitary Authority and the definition should be updated to reflect this, noting that the text has already been amended to refer to Buckinghamshire Council in the first instance. The Applicant's response to the noise technical panels issue is a misinterpretation of the Council's request and the SoCG ID referenced do not relate to the point raised. The response is also contradictory to the updated position within the Terms of Reference for the Technical Panels which states that the Noise Limit Review, triggered by publication of a new ICAO chapter or approval of a proposal for airspace change must: d. Identify whether changes to the forecast shape of the 54dBLAeq,16h and 48dBLAeq,8h noise contours have occurred, such that noise impacts are experienced by different local authorities from those originally identified and included as part of the Noise Technical Panel; e. Where (d) identifies changes to the forecast shape of the 54dBLAeq,16h and 48dBLAeq,8h noise contours, set out any necessary amendments to the local authorities included as part of the Noise Technical Panel. It is on this basis that BC is suggesting that should it, or any other authority, be included as a member of the Noise Technical Panel as a result of a noise limit review then the S106 legal agreement should make allowance for the potential change in the technical panel membership to specifically include BC as a potential member and Schedule 5 amended commensurately to ensure relevant payments are made to any new member of the technical panel. It should also be noted that in its current form Schedule 5 fails to capture all additional members of the Technical Panel outlined in Table 2.1 of the Technical Panel Terms of Reference. Whilst not	

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			all of these members may be party to the S106 legal agreement the Council believes that the Applicant should set out clearly how the payments proposed for the host authorities (in their role on the Technical Panels) would also be secured for other authorities, either currently proposed or as a future addition to the membership. The Council would also draw the ExA's attention to its comments made above with regard to Schedule 5. In terms of the commitment to fund 40% of the Community Fund on projects outside the administrative area of Luton, Schedule 7 already secures the Compensation policies and Measures and Community First document. Schedule 9 should align with Schedule 7 and make reference to the document as well as specifically confirm the 40% commitment within Schedule 9.	
3	Buckinghamshire Council	**[REP10-049]** para. 2.29.1 page. 10	This submission has been reviewed. The Council has made more detailed comments in its separate response to (REP9-051), however, outstanding matters are summarised below for ease of reference. The updated S106 names BC as a prospective member of the ATF Steering Group and prospective recipient of the RIF, but it fails to secure membership in perpetuity. The Council has concerns regarding the underfunding of the RIF and that the RIF is not index-linked. The Council has concerns with the definition of 'Local Area' within the S106 and believes that the entirety of Buckinghamshire Council's administrative area should fall within this definition, particularly when considering its inclusion in the ETS Study Area and that the aim of the ETS is to mitigate impacts from the expansion on this area. Schedule 5 of the draft S106 Agreement should be amended to ensure that should the Council, or any other authority, be included as a future member of the Noise Technical Panel (as a result of a noise limit review) then the S106 agreement should make allowance for a potential change in the technical panel membership to ensure relevant payments are made to any new member of the technical panel. It should also be noted that in its current form Schedule 5 fails to capture all additional members of the Technical Panel outlined in Table 2.1 of the Technical Panel Terms of Reference. Schedule 9 should align with Schedule 7 and make reference to the Compensation policies and Measures and Community First document as well as specifically confirm the 40% commitment within Schedule 9.	Responses to these points have been picked up in the final **SoCG between London Luton Airport Limited and Buckinghamshire Council [TR020001/APP/8.18]** and are not repeated here.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			Paragraph 2.5 of Schedule 9 refers to the potential discontinuance of the STF should certain thresholds be met. It is not clear from the Applicant's submission in what set of circumstances this would be deemed acceptable and the Council would seek further clarity on this matter. 2.29.2. Further to the above the Council would consider that the use of side agreements, alongside the S106, would go some way to addressing the Council's concerns regarding the securing of the necessary provisions	
4	Dacorum Borough Council, Hertfordshire County Council, North Hertfordshire District Council	**[REP10-056]** Table. 9 page. 10	Matters Raised: REP9-056 presents the Applicant's response to a request by the ExA [PD-017] to provide event that it might not be possible to reach agreement on the section 106 by the end of the examination. Hertfordshire Host Authorities Comment: Agreement has now been substantively reached on the section 106 and it is expected that this will be executed before the end of the examination, so the Hertfordshire Host Authorities have no comments to make on this document at this stage, other than the following comments should the ExA recommend the inclusion of the following requirements into the DCO.	Noted. As at 7 February 2024 all parties to the section 106 agreement have agreed that it is in final form and the agreement has been issued for signature.
5	Dacorum Borough Council, Hertfordshire County Council, North Hertfordshire District Council	**[REP10-056]** Table. 9 page. 10	Matters raised: Schedule 4 requires the Applicant and the airport operator to adhere to the ETS. The Applicant has suggested in the event that the section 106 is not agreed before the end of the Examination, the inclusion of a new requirement 35. Hertfordshire Host Authorities Comment: The Hertfordshire Host Authorities suggest that, should for any reason, the requirement be included in place of, or as well as the section 106, the ETS should be implemented from the date of commencement.	Noted. As at 7 February 2024 all parties to the section 106 agreement have agreed that it is in final form and the agreement has been issued for signature.
6	Dacorum Borough Council, Hertfordshire County Council, North Hertfordshire District Council	**[REP10-056]** Table. 9 page. 10	Matters raised: Schedule 7 requires the Applicant and the airport operator to comply with and implement the measures in the Compensation Policies, Measures and Community First document. The Applicant has suggested in the event that the section 106 is not agreed before the end of the Examination, the inclusion of a new requirement 36. Hertfordshire Host Authorities Comment: The Hertfordshire Host Authorities suggest that, should for any reason, the requirement be included in place of, or as well as the section 106, the Compensation Policies, Measures and	Noted. As at 7 February 2024 all parties to the section 106 agreement have agreed that it is in final form and the agreement has been issued for signature.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			Community First document should be implemented from the date of commencement.	
7	Dacorum Borough Council, Hertfordshire County Council, North Hertfordshire District Council	**[REP10-056]** Table. 9 page. 10	Matters raised: Schedule 9 has been removed from the section 106 agreement, that has now been substantively agreed with the Applicant. Hertfordshire Host Authorities Comment: This schedule has been removed from the section 106 agreement, that has now been substantively agreed with the Applicant. The Hertfordshire Host Authorities understand that a revised Sustainable Transport Fund document will be submitted at Deadline 10 and will provide any further comments on that document at Deadline 11, together with any comments on the drafting of a requirement that would be required to implement it.	Noted. As at 7 February 2024 all parties to the section 106 agreement have agreed that it is in final form and the agreement has been issued for signature.

2.12 SURFACE ACCESS

Table 2.12 provides a response to matters the Applicant considers need to be responded to.

Table 2.12 Applicant's Response to Deadline 10 Submissions

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
1	Buckinghamshire Council	**[REP10-050]** Table 1.3 ID 14	The Council notes the Applicant's response and in particular the new commitment that would allow for a proportion of the surplus STF revenues to be made available for the Community Fund, Community First and the RIF. Whilst the Council welcomes the Applicant's admission that there is a need to further increase the funds available elsewhere, including through the OTRIMMA, it is not felt that this goes far enough as it offers no certainty to the level of funds available. The Council would proffer that even based on crude calculations the costs of initial evidence gathering and scheme design across a handful of mitigation type 2 related proposals is likely to use up the funds in their entirety before considering the prospect of the implementation works themselves. As such the Council would suggest that 100% of surplus funds should be made available to the RIF in the first instance (due to the funds' original purpose being to support transport related matters) before any resultant residual funds being redistributed elsewhere.	The proposal to redistribute a proportion of surplus available STF funds at the end of any calendar year is not an admission that there is a need to further increase the funds available elsewhere, rather it was a pragmatic response to requests from local highway authorities for more flexibility in how the funds are used. As stated in the Deadline 10 submission of the **OTRIMMA [REP10-036]** and the **STF [REP10-039]**, MT2 measures are now proposed to be funded by the STF prior to any redistribution of surplus funds elsewhere.
2	Buckinghamshire Council	**[REP10-049]** para. 2.26.1 page. 9	This submission has been reviewed. The Council notes the Applicant's submission and in particular the new commitment that would allow for a proportion of the surplus STF revenues to be made available for the Community Fund, Community First and the RIF. Whilst the Council welcomes the Applicant's admission that there is a need to further increase the funds available elsewhere, including through the OTRIMMA, it is not felt that this goes far enough as it offers no certainty to the level of funds available. The	Please see response above at ID 1 of this table.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
			Council would proffer that even based on crude calculations the costs of initial evidence gathering and scheme design across a handful of mitigation type 2 related proposals is likely to use up the funds in their entirety and before considering the costs of the implementation works themselves. As such the Council would suggest that 100% of surplus funds should be made available to the RIF in the first instance (due to the funds' original purpose being to support transport related matters) before any resultant residual funds are redistributed elsewhere.	
2	Buckinghamshire Council	**[REP10-050]** Table 1.3 ID 33	The Council has been unable to identify the D9 update referred to by the Applicant as there would appear to be no section 1.7 in the updated STF document.	Please see paragraphs 2.3.12 and 2.3.13 of the Deadline 9 **Sustainable Transport Fund [REP9-044].**
3	Stop Luton Airport Expansion	**[REP10-091]** 2.2.3 page. 1	Any charges to staff for parking will encourage fly-parking. Do LR or LLAOL charge staff for parking and if so, what are the charges?	The Applicant has previously confirmed that neither it, nor the airport operator have any staff parking charges.
4	Stop Luton Airport Expansion	**[REP10-091]** 2.3.13 page. 1	Where does the £1,000,000 come from? Is this fund taken from the RIF? Does this mean that the RIF fund is £1,000,000 and STF is also £1,000,000?	The £1,000,000 to be made available to pump prime services will be provided by the Applicant as outlined in the **draft DCO [REP10-003]**. The RIF and STF have been combined to form a single fund (the STF). At the same time, the cap on the STF has been removed and the Applicant has confirmed it will be an ongoing fund. The provision for the Applicant to recover any early pump priming funds has also been removed. All of these changes were set out in **Sustainable Transport Fund [REP10-039]** submitted at Deadline 10**.**
5	Stop Luton Airport Expansion	**[REP10-091]** 2.3.14 page. 1	Is the assumption that any Controlled Parking Zone costs are addressed before any surplus is redistributed?	This is not an assumption that the Applicant has made. As per section 2.4 of the **STF** submitted at Deadline 10 **[REP10-039]**, "The STF may be used to fund interventions aimed at tackling residual traffic-related effects of the Proposed Development." This would include the funding of the introduction of CPZs.
6	Stop Luton Airport Expansion	**[REP10-091]** 2.3.15 page. 2	Why is there no representative for residents of airport adjoining wards on the ATF and steering group? Particularly when fly-parking associated with airport users is covered in multiple documents and governed through Steering Groups within the Airport Transport Forum, either through the TRIMMA or STF processes as identified in LR's response to 001953-8.56-Applicant-response-to-Deadline-2- submissions-comments-from-IPs-on-D1-Appendix-F-Friends-of-Wigmore-Park	As set out in the **Sustainable Transport Fund [REP10-039]** matters such as fly parking will be brought to the attention of the ATF Steering Group by the local highway authorities which constitute its membership. These authorities will be responsible for the gathering of evidence for any need to address fly parking, which may be informed by residents of the area governed by each authority. It is therefore not necessary for other groups or individuals to be members of the ATF Steering Group.
7	National Highways	**[REP10-062]**	It is National Highways' position that notwithstanding the fact that no land or rights are proposed to be acquired (and therefore the provisions of s127/138 are not engaged), the substantive issues between the parties does cause serious detriment to the strategic road network and consequently we will be making submissions at Deadline 11.	The Applicant strongly refutes National Highways' statement that the Proposed Development causes serious detriment to the strategic road network. It is recorded in the **SoCG between London Luton Airport Limited and National Highways [TR020001/APP/8.11]** item 3.2.1 that the design of Junction 10 works has been agreed. The traffic modelling was developed in consultation with the relevant highway authorities and in accordance with best practice and guidance as set out in the DfT's TAG and is therefore appropriate to assess the impact of the Proposed Development.

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
				Paragraph 115 of the National Planning Policy Framework (NPPF) (December 2023) states that: "*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."* In this context the Applicant notes Appeal decision 3185493 (Planning Inspectorate, 2018) which confirmed that "That approach was that the term 'severe' sets a high bar for intervention via the planning system in traffic effects arising from development; mere congestion and inconvenience are insufficient in themselves but rather it is a question of the consequence of such congestion." This has been endorsed in other decisions (Appeal decision 3157862). The Applicant considers that the modelling as reported in **Accounting for Covid-19 in Transport Modelling – Environmental Appraisal [REP7-079]** shows that the highway improvements delivered by the Proposed Development would mitigate the impacts on the SRN and result in acceptable operation of the road network. The **Response to Comments from the Highway Authorities on the 'Accounting for Covid-19 in Transport Modelling Final Report' [REP8-039]** concludes the following: • Paragraph 5.3.15 states 'The Accounting for Covid-19 in Transport Modelling Final Report [AS-159] presents a comprehensive impact assessment of the Proposed Development on the M1 J10. Overall, an improvement in the network performance is anticipated throughout each of the assessment phases when contrasted with the Future Baseline performance. In particular, an assessment of the journey times for trips on the M1 mainline and trips between M1 and A1081 clearly demonstrates no significant adverse impact on junction operation. Moreover, proposed mitigation measures enhance junction operation beyond the anticipated Future Baseline performance. These measures ensure smooth traffic merging and diverging from the M1 mainline to the slip lanes, sustaining mainline performance throughout the assessed period.' • Paragraph 5.3.16 states 'The Applicant therefore concludes that the Proposed Development will not have any material residual adverse impacts on the operation of the M1 mainline or the south facing slips.' In conclusion, the Applicant considers that the Proposed Development does not have an unacceptable impact on highway safety as a result of the performance of the south facing slips and mainline as demonstrated by the modelling. The Applicant also considers that the Proposed Development does not have a residual impact on the road network that is severe for the same reason. National Highways has not produced any information on an evidential basis to the contrary. The Applicant has demonstrated that the Proposed Development has put in place, through the TRIMMA process, a robust mechanism to mitigate its impacts on the SRN and as such, no further mitigation is necessary, and there are no grounds for the imposition of Grampian conditions to be applied

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
				to the Proposed Development. To elaborate on this point, the OTRIMMA **[REP10-036]**, secured by Requirement 30 of the draft DCO **[REP10-003]**, provides that National Highways: - will be consulted on the final TRIMMA; - will be a member of the ATF Steering Group; - will have approval function over monitoring at ML3 thresholds; - will have approval function over the implementation threshold at which point Schedule 1 highway mitigation works must be implemented; - will have an approval function over those works; and - will be able to agree with the Applicant a different form of intervention. In addition, the Applicant has put forward substantial protective provisions which require prior approval by National Highways of all works, and compliance with all standards and procedures required by National Highways. The Applicant's position is that National Highways' interests are robustly protected by the TRIMMA process and protective provisions, which provide a "monitor and mitigate" approach which is appropriate to a development which will be delivered over two decades. Set in that context, National Highways' requests for Grampian conditions, and the severely restrictive and disproportionate controls it is seeking via protective provisions, are not justified or necessary. The Applicant invites the Examining Authority and the Secretary of State to reach the same conclusion. The Applicant would also like to highlight Paragraph 5.20 of the ANPS: *"Where a surface transport scheme is not solely required to deliver airport capacity and has a wider range of beneficiaries, the Government, along with relevant stakeholders, will consider the need for a public funding contribution alongside an appropriate contribution from the airport on a case by case basis. The Government recognises that there may be some works which may not be required at the time the additional runway opens, but will be needed as the additional capacity becomes fully utilised. The same principle applies that, where a transport scheme is not solely required to deliver airport capacity, the Government, along with relevant stakeholders, will consider the need for a public funding contribution alongside an appropriate contribution from the airport on a case by case basis."* In recognition of the ANPS and the Applicant's willingness to work with National Highways, a commitment has been added to section 4.2.3 of the OTRIMMA [TR020001/APP/8.97]. This sets out a commitment from the Applicant to make a financial contribution to assist National Highways in the event that National Highways considers that the operation of the M1 J10 southbound on-slip or M1 mainline between J9 and J10 requires works to alleviate congestion, and in the event that National Highways develop and implement proposals for such works. This offer is yet to be accepted by National Highways but is secured by the DCO v and further removes the need

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
				for a Grampian condition. The Applicant wishes to highlight to the Examining Authority that changes made to the **OTRIMMA** for Deadline 10 **[REP10-036]** were a good faith response by the Applicant to negotiations with National Highways, which whilst ongoing at the time had already confirmed agreement in principle on several matters on a number of occasions, including the adequacy of the future TRIMMA to meet the requirements of National Highways and the consequent lack of a need for any form of Grampian condition. The Applicant points to **[REP8-067]** in which National Highways noted "*We therefore recognise that planning conditions that constrain the proposed development unless specific works are implemented at particular times may not be the most appropriate way to safeguard the SRN*" to demonstrate that National Highways were indicating their acknowledgement that the imposition of Grampian conditions was not appropriate. Consequently, the Applicant was very disappointed that subsequent to those concessions being made at deadline 10 in the spirit of what was being agreed outside of the public arena, National Highways appears to have retreated from what was understood to be an agreed position without prior consultation with the Applicant. Notwithstanding the above, the Applicant remains prepared and willing to continue to engage with National Highways to find a mutually acceptable resolution to the current differences.

2.13 TOWN PLANNING

Table 2.13 provides a response to matters the Applicant considers need to be responded to.

Table 2.13 Applicant's Response to Deadline 10 Submissions

I.D	Interested Party	Reference	Summary of Matter Raised Requiring a Response (Verbatim)	Luton Rising's Response
1	Michael Reddington	**[REP10-084]** Table 2 ID. 5 page. 4	The Applicant has not answered the question. 2031 is when the current Local Plan runs out and this is before the beginning of Phase 2. IN effect then is it true that should the DCO go ahead, the new Local Plan will be redundant for this purpose as it cannot overrule the DCO ?	A Local Plan could not 'overrule' an application for development consent although it is likely to be regarded as an important and relevant consideration. The decision making context for this application for development consent is set out in section '1.4 Legislative Context' of the **Planning Statement [REP5-016].** For this application for development consent, all elements are tested against the currently adopted policy at the time it was submitted.

REFERENCES

Ref 1 Environment Agency (2011) H4 Odour Management
Ref 2 Independent Commission on Civil Aviation Noise (2021), ICCAN review of airport noise insulation schemes
Ref 3 Department for Transport, Overarching Aviation Noise Policy, March 2023
Ref 4 Department for Transport, Flightpath to the Future, May 2022, page 21
Ref 5 Civil Aviation Authority (2021), CAP1616 Airspace Change
Ref 6 Civil Aviation Authority (2017), CAP1498 Definition of overflight
Ref 7 Her Majesty's Stationery Office (2008) The Planning Act

APPENDIX 1 – APPLICANT'S COMMENTARY ON, AND AMENDMENTS TO, THE PREFERRED PROTECTIVE PROVISIONS OF THE LOCAL HIGHWAY AUTHORITIES

PART 6

FOR THE PROTECTION OF LOCAL HIGHWAY AUTHORITIES

Commented [BDBP1]: Applicant's comment - the base of this document is the form of protective provisions the Applicant *understands* that Host Authorities will submit at D11. The tracked changes are those considered necessary by the Applicant to make them acceptable.

Application, etc.

53.—(1) The provisions of this Part of this Schedule apply for the protection of local highway authorities unless otherwise agreed in writing between the undertaker and a relevant highway authority.

(2) An agreement for the purpose of sub-paragraph (1) includes, but is not limited to, an agreement made under article 17 of this Order, or under the 1980 Act.

(3) Any approval or consent of a local highway authority required under this Part of this Schedule—

(a) must not be unreasonably withheld or delayed;

(b) must be given in writing;

(c) in the case of a refusal must be accompanied by a statement of grounds for refusal; and

(d) may be subject to any conditions as the local highway authority reasonably considers necessary.

54.—(1) In this Part of this Schedule—

"bond sum" means the sum equal to 150% of the costs of carrying out the specified works (to include all the costs plus the commuted sum) or such other sum agreed between the undertaker and the relevant highway authority;

"the cash surety" means the sum agreed between the undertaker and the relevant highway authority, acting reasonably;

"commuted sum" means such reasonable sum calculated as provided for in paragraph 67 of this Part of this Schedule to be used to fund the future cost of maintaining the specified works;

"detailed design information" means such drawings, specifications and other information, as are relevant to and reasonably required in respect of any specified works, to comprise the following—

(a) site clearance details;

(b) boundary, environmental and mitigation fencing;

(c) road restraint systems (vehicle and pedestrian);

(d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;

(e) earthworks as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;

(f) highway pavements, pavement foundations, kerbs, footways and paved areas;

(g) traffic signs and road markings;

(h) traffic signal equipment and associated signal phasing and timing detail;

(i) road lighting (including columns and brackets);

(j) electrical work for highway lighting and traffic signs;

(k) highway structures;

(l) landscaping, planting and any boundary features which will form part of the local highway;

(m) utility diversions insofar as in the existing or proposed local highway;

(n) a schedule of timings for the works, including dates and durations for any closures of any part of the local highway;

(o) stage 1 and stage 2 road safety audits prepared in accordance with paragraph 57;

(p) traffic management proposals including any diversionary routes;

(q) a schedule of the existing local highway condition prior to ~~beginning~~ commencing construction related activities ~~beginning~~;

(r) a specification of the condition in which it is proposed that the local highway will be returned once the specified works have been completed;

(s) tracking plans, including a version of such plans in AutoCAD format or such other software format as the relevant highway authority may reasonably request;

(t) highway alignment drawings;

(u) drainage contour plans and drainage calculations;

(v) visibility splay plans; and

(w) any temporary works structures which are to be erected or retained under the Order or otherwise;

"DMRB" means the Design Manual for Roads and Bridges or any replacement or modification of that standard for the time being in force;

"final certificate" means the final certificate issued by a relevant highway authority under paragraph 63 of this Part of this Schedule;

"maintenance period" means the period from the date of the provisional certificate being issued to the date of the final certificate being issued, unless otherwise agreed in writing between the undertaker and the relevant highway authority;

"provisional certificate" means the certificate issued under paragraph 62 of this Part of this Schedule;

"specification for highways works" means the specification for highways works published from time to time by the relevant highway authority setting out the requirements and approvals procedures for work, goods or materials used in the construction, alteration, improvement or maintenance of the local highway network; and

"specified works" means any part of the authorised development that involves the construction, alteration or improvement of a local highway.

(2) For the purposes of its obligations to procure a bond under this Part of this Schedule, the undertaker may procure a bond in relation to the specified works, and a separate bond in relation to the commuted sums, and in those circumstances references in this Part to "bond" and "bond sum" means both bonds together.

Detailed design information and ~~beginning relevant works~~commencement

55. (1) Before ~~beginning~~ commencing any specified works, the undertaker must—

(a) provide to the relevant highway authority the detailed design information relating to those specified works and obtain the relevant highway authority's written approval for those works; and

(b) secure road space booking from the relevant highway authority, such road space booking approval not to be unreasonably withheld or delayed.

Security

56. The specified works must not ~~begin~~ commence until—

(a) the undertaker procures that the specified works are secured by a bond from a bondsman first approved by the relevant highway authority, in a form agreed between the undertaker and the relevant highway authority, to indemnify the relevant highway authority against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and

Commented [BDBP2]: The Applicant does not agree with the Local Highway Authority proposal to replace "commence" with "begin".

The use of the term "commencement" aligns with the provisions of Schedule 2 to the draft DCO and the Applicant considers that this is beneficial to all parties as it provides a mechanism to expedite works and reduce disruption. NB. the Applicant points the Host Authorities and the Examining Authority to Article 13, the effect of which is that the Applicant cannot restrict highways etc. without local authority permission in any event.

The comment applies to all instances where the Applicant has reinserted "commence" in these protective provisions.

the specified works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; and

(b) the undertaker has provided the cash surety which may be utilised by the relevant highway authority in the event of the undertaker failing to make payments under paragraph 61 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule.

Road safety audits

57.—(1) Road safety audits required to be carried out by the undertaker under the provisions of this Part of this Schedule must be carried out in accordance with the Design Manual for Roads and Bridges standard GG119 or any replacement or modification of it.

(2) No stage of any road safety audit that is required to be carried out by the undertaker under this Part of this Schedule in relation to any specified works is to begin until the relevant highway authority has approved in writing for that stage of road safety audit of those specified works—

(a) the curriculum vitae of the persons carrying out the road safety audit; and

(b) the road safety audit brief.

(3) The specified works must not commence until a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised in the audit or any exceptions are approved by the relevant highway authority.

(4) Where the report of the stage 3 and 4 road safety audit identifies any recommended measures in respect of a local highway, the undertaker must carry out, at its own expense and to the reasonable satisfaction of the relevant highway authority, those measures identified as part of the stage 3 and 4 road safety audit provided that—

(a) the undertaker has the powers to deliver the measures under this Order; and

(b) the measures do not give rise to any new or materially different environmental effects in comparison with those identified in the environmental statement.

(5) If by the operation of sub-paragraphs (4)(a) or (4)(b) the undertaker is not required to carry out the recommendations of a stage 3 or stage 4 road safety audit the relevant highway authority may instead carry out those recommendations and recover the reasonable costs of so doing from the undertaker.

Construction of the specified works

58. The specified works must be carried out by the undertaker to the reasonable satisfaction of the relevant highway authority in accordance with—

(a) the relevant detailed design information approved by the relevant highway authority under paragraph 55 or as subsequently varied by agreement between the undertaker and the relevant highway authority;

(b) the DMRB, the specification for highway works, together with all other relevant standards as required by the relevant highway authority to include, inter alia, all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016(**a**) save to the extent that exceptions from those standards apply which have been approved by the relevant highway authority; and

(c) all aspects of the Construction (Design and Management) Regulations 2015(**b**) or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the reasonable satisfaction of the relevant highway authority.

(**a**) S.I. 2016/362.
(**b**) S.I. 2015.51.

Inspections and testing of materials

59.—(1) The undertaker must allow and facilitate an appropriately qualified officer or officers of a relevant highway authority that have been nominated by that relevant highway authority (each being a "nominated officer") to access and inspect at all reasonable times any part of the specified works during their construction and before a final certificate has been issued in respect of the specified works as is reasonably necessary to ensure that the works have been or are being carried out to the appropriate standard.

(2) Any testing reasonably requested by the relevant highway authority of materials used in any specified works must be carried out at the undertaker's expense and in accordance with the DMRB (or any other testing specification agreed by the undertaker and the relevant highway authority acting reasonably).

(3) A relevant highway authority (or its agent) may test all or any materials used or proposed to be used in any specified works and the undertaker must provide such information, access and materials as is reasonably required to facilitate such testing.

(4) The undertaker must, as soon as is reasonably practicable, provide the relevant highway authority with a copy of all test certificates and results relevant to the specified works that the relevant highway authority has requested in writing.

(5) The relevant highway authority must as soon as is reasonably practicable provide the undertaker with a copy of all test results and certificates relevant to the works that the undertaker has requested in writing.

(6) In circumstances where any relevant work carried out by the undertaker is tested by the relevant highway authority pursuant to the provisions of this Part and that test resulted in works being undone at the undertaker's expense (acting reasonably) and found to be satisfactory then that expense must forthwith be reimbursed by the relevant highway authority provided that the relevant highway authority was given a reasonable opportunity by the undertaker to inspect the works at a time when the works could have been inspected without the need to incur the expense.

~~(6)~~(7) If any part of the specified works is constructed—

(a) other than in accordance with the requirements of this Part of this Schedule; or

(b) in a way that causes damage to the highway, highway structure or asset or any other land of the relevant highway authority,

the relevant highway authority may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the reasonable satisfaction of the relevant highway authority.

~~(7)~~(8) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the local highway then the relevant highway authority may by notice in writing require the undertaker, at its own expense, to remedy the damage.

~~(8)~~(9) If within 28 days on which a notice under sub-paragraph (7) or sub-paragraph (8) is served on the undertaker (or in the event of there being, in the opinion of the relevant highway authority, a danger to highway users, within such lesser period as the relevant highway authority may stipulate), the undertaker has failed to take the steps required by that notice, the relevant highway authority may carry out the steps required of the undertaker and may recover any expenditure incurred by the relevant highway authority in so doing, such sum to be payable within 30 days of demand.

Defects in local highways constructed by the undertaker

60.—(1) Until such time as a final certificate has been issued in respect of any specified works, the undertaker must make good any defects in the specified works constructed by the undertaker to the reasonable satisfaction of the relevant highway authority.

(2) The undertaker must submit to the relevant highway authority such details and information relating to making good any defects under sub-paragraph (1) as the relevant highway authority and the undertaker agree is reasonable in the circumstances.

Commented [BDBP3]: Applicant's comment:

The Applicant understands that the Host Authorities will omit this paragraph in their protective provisions, but the Applicant insists on its inclusion.

This provision is wholly reasonable. Its purpose is to reimburse the undertaker's cost of "undoing" works for a requested inspection, which then finds that the works were satisfactory in the first place. The Applicant notes that this scenario is avoidable if inspections are carried out at a point that does not require reversal of works

Payments

61.—(1) The undertaker must pay to the relevant highway authority a sum equal to the whole of any costs and expenses which the relevant highway authority reasonably incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part of this Schedule, including—

(a) the checking and approval of the information and any advice given to the undertaker relating to the design, specification and programme of the specified works generally;

(b) the supervision of the specified works;

(c) the checking and approval of the information required to determine approvals under this Order;

(d) all reasonable legal, technical and administrative costs and disbursements incurred by the relevant highway authority in connection with sub-paragraphs (a)-(c); and

(e) any value added tax which is payable by the relevant highway authority in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising "the costs".

(2) The undertaker must pay to the relevant highway authority upon demand and prior to such costs being incurred the total costs that the relevant highway authority reasonably believe will be properly and necessarily incurred by the relevant highway authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) The relevant highway authority must provide the undertaker with a fully itemised schedule showing its estimate of the relevant highway authority costs prior to ~~beginning~~ commencing the specified works and the undertaker must pay to the relevant highway authority the estimate of the costs attributable to the specified works prior to commencing the specified works and in any event prior to the relevant highway authority incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, the relevant highway authority reasonably believes that the costs will exceed the estimated costs it may give notice to the undertaker of the amount that it believes the costs will exceed the estimate ("the excess") and the undertaker must pay to the relevant highway authority within 28 days of the date of the notice a sum equal to the excess.

(5) The relevant highway authority must give the undertaker a final account of the costs referred to in sub-paragraph (1) to (4) above within 30 days of the issue of the provisional certificate issued pursuant to paragraph 62.

(6) Within 28 days of the issue of the final account—

(a) if the final account shows a further sum as due to the relevant highway authority the undertaker must pay to the relevant highway authority the sum shown due to it; and

(b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by the relevant highway authority, the relevant highway authority must refund the difference to the undertaker.

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional certificate

62.—(1) Subject to sub-paragraph (2), when the undertaker considers that the specified works have reached completion so that they are available for use by the public it must apply to the relevant highway authority for a provisional certificate and must allow the relevant highway authority the opportunity to inspect the specified works to identify any defects or incomplete works (and the undertaker must make good such defects pursuant to paragraph 60).

(2) Following an application for a provisional certificate, the relevant highway authority must as soon as reasonably practicable—

(a) inspect the specified works; and

(b) provide the undertaker with a written list of any works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(3) When—

(a) a stage 3 road safety audit has been carried out in respect of the works in question and any recommended measures identified in the audit have been completed and approved by the relevant highway authority;

(b) the relevant highway authority has been provided an opportunity to inspect the specified works and the undertaker has completed any further works or measures required to address any safety deficiencies or defects identified as a result of the inspection, to the reasonable satisfaction of the relevant highway authority; and.

(c) the undertaker has paid the commuted sum to the relevant highway authority,

the relevant highway authority must promptly issue the provisional certificate to the undertaker.

(4) The undertaker must submit a stage 4 road safety audit as required by and in line with the timescales stipulated in the road safety audit standard.

(5) The undertaker must comply with the findings of the stage 4 road safety standard and must pay all reasonable costs of and incidental to such and provide updated as-built information to the relevant highway authority.

Maintenance

63.—(1) Notwithstanding article 12 (construction and maintenance of new, altered or diverted streets) of this Order, but subject to sub-paragraph (2), the undertaker must maintain the specified works throughout the maintenance period to a standard appropriate to their use by the public until the final certificate is issued in accordance with paragraph 64.

(2) Nothing in sub-paragraph (1) makes the undertaker responsible during the maintenance period for the maintenance of any highway, street works or maintenance works—

(a) undertaken by any person other than the undertaker; or

(b) which do not form part of the specified works.

Final certificate

64.—(1) No sooner than 12 months from the date of issue of the provisional certificate the undertaker must apply in writing to the relevant highway authority for a final certificate in respect of the specified works.

(2) Following receipt of the application for a final certificate, the relevant highway authority must as soon as is reasonably practicable—

(a) inspect the specified works; and

(b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the local highway network, or confirmation that no such works are required for this purpose.

(3) The undertaker must carry out such works notified to it pursuant to sub-paragraph (2).

(4) The relevant highway authority must promptly issue the final certificate to the undertaker once the relevant highway authority is reasonably satisfied in relation to the specified works that—

(a) any defects or damage arising from defects during the maintenance period and any defects notified to the undertaker pursuant to sub-paragraph (2) and any remedial works required as a result of the stage 4 road safety audit have been made;

(b) the costs have been paid to the relevant highway authority in full;

(c) the undertaker has provided the relevant highway authority with a health and safety file in respect of the specified works to the relevant highway authority's reasonable satisfaction; and

(d) the undertaker has provided the relevant highway authority with such detailed design information as the relevant highway authority has requested (acting reasonably) in relation to the specified works as built.

(5) The issue of a final certificate by a relevant highway authority amounts to an acknowledgment by the relevant highway authority that the construction alteration or diversion (as the case may be) of a highway has been completed to its reasonable satisfaction for the purposes of article 12 of this Order.

(6) On the issue of the final certificate to the undertaker the bond is to be released in full.

Emergency work

65. Nothing in this Part of this Schedule prevents a relevant highway authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public.

Land interests

66. Following the issuing of the final certificate under paragraph 63 in respect of any part of a local highway, the undertaker must, if requested by the relevant highway authority, in respect of a local highway which is to be maintainable by the relevant highway authority following, and as a result of, the completion of those works either—

(a) execute and complete a transfer to the relevant highway authority at nil consideration of any land and rights which have been compulsorily acquired under this Order and which are necessary for the maintenance and operation of a local highway; or

(b) exercise article 24 (compulsory acquisition of land) and article 27 (compulsory acquisition of rights and imposition of restrictive covenants) of this Order to directly vest in the relevant highway authority land or s which are necessary for the maintenance and operation of a local highway,

unless otherwise agreed between the undertaker and the relevant highway authority.

Commuted sums

67.—(1) The relevant highway authority must provide to the undertaker an estimate of the commuted sum, calculated in accordance with the relevant highway authority's published guidance or any successor guidance, prior to the commencement of ~~beginning~~ the specified works.

(2) The undertaker must pay to the relevant highway authority the commuted sum prior to the issue of the provisional certificate.

Insurance

68. Prior to the commencement of ~~beginning~~ the specified works the undertaker must ensure that such public liability insurance ~~in the minimum sum of £10,000,000~~ as the local highway authority may reasonably require for the specified works in question is in place with an insurer against any

Commented [BDBP4]: Applicant's response:

Given that the scale of local highway works could vary considerably, the Applicant considers that a minimum insurance sum should not be listed here and that the local highways authorities' suggested text should be removed. The resultant drafting allows proportionate flexibility whilst still being in the control of the local highway authority.

legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works.

Indemnity

69.—(1) Subject to sub-paragraphs (2) and (3) the undertaker fully indemnifies the relevant highway authority from and against all costs, claims, expenses, damages, losses and liabilities suffered by the relevant highway authority arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 14 days of demand.

(2) Sub-paragraph (1) does not apply to costs, claims, expenses, damages, losses and liabilities which were caused by or arose out of the negligence or default of the relevant highway authority or its officers, servants, agents or contractors or any person or body for whom it is responsible.

(3) If any person makes a claim or notifies an intention to make a claim against the relevant highway authority which may reasonably be considered likely to give rise to a liability under this paragraph then the relevant highway authority must—

(a) as soon as reasonably practicable give the undertaker reasonable notice of any such third party claim or demand, specifying the nature of the indemnity liability in reasonable detail; and

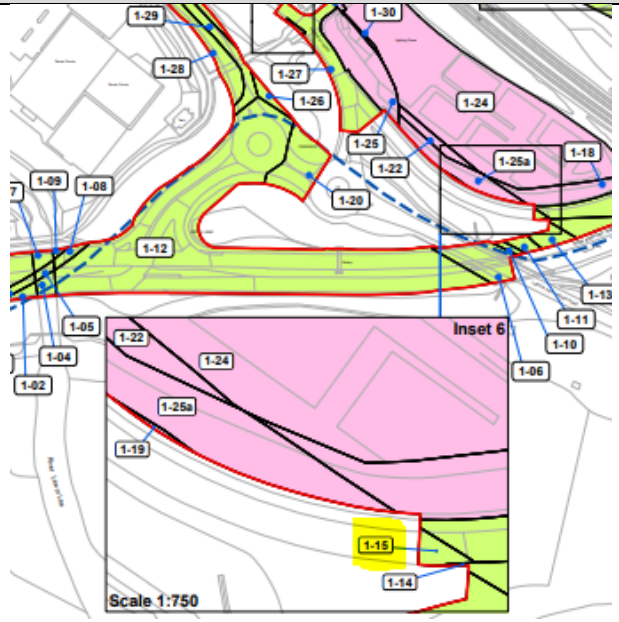
(b) not make any admission of liability, agreement or compromise in relation to the indemnity liability without first consulting the undertaker and considering their representations.

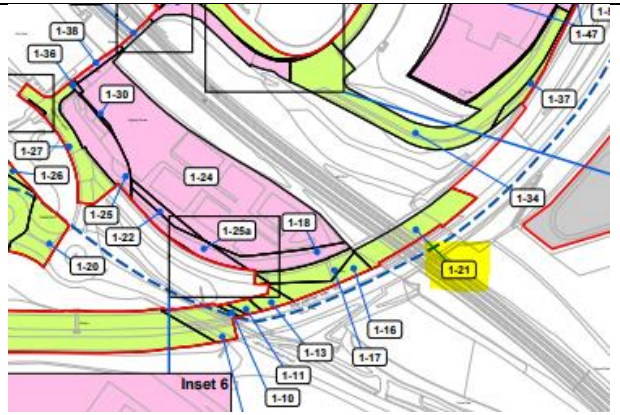
(4) The relevant highway authority must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph applies where it is within the relevant highway authority's reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of the relevant highway authority's control. The relevant highway authority must provide an explanation of how any claim has been mitigated or minimised or where mitigation or minimisation is not possible an explanation as to why, if reasonably requested to do so by the undertaker and only in relation to costs that are incurred which are within the relevant highway authority's direct control.

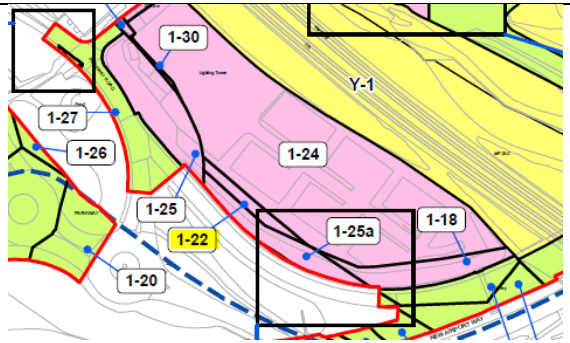
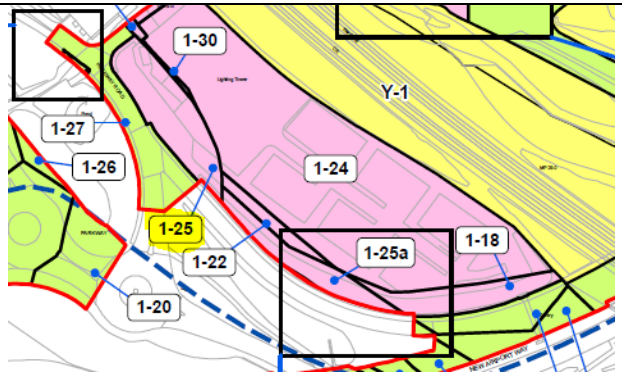
APPENDIX 2 – SCHEDULE OF PLOTS WITH NETWORK RAIL INTERESTS

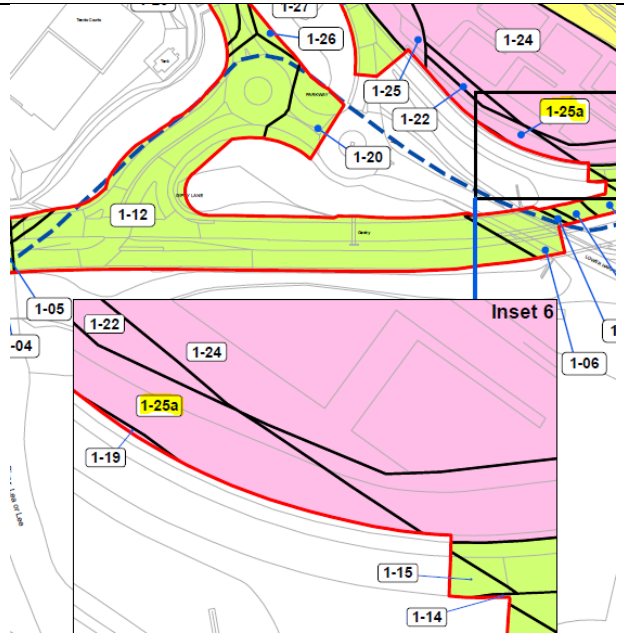
London Luton DCO – Network Rail Interest(s)

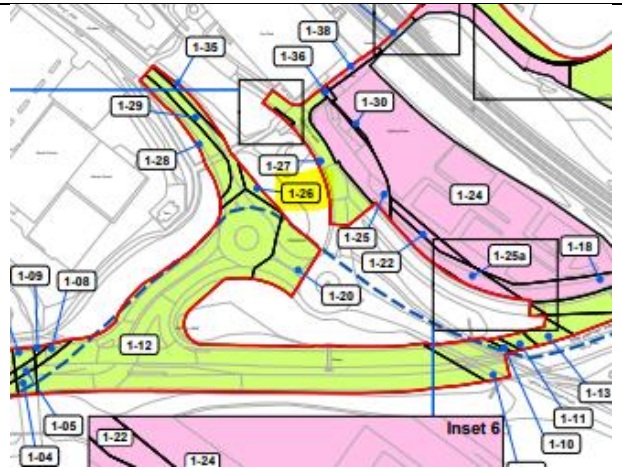
Based on book of Reference and draft DCO submitted with the DCO application.

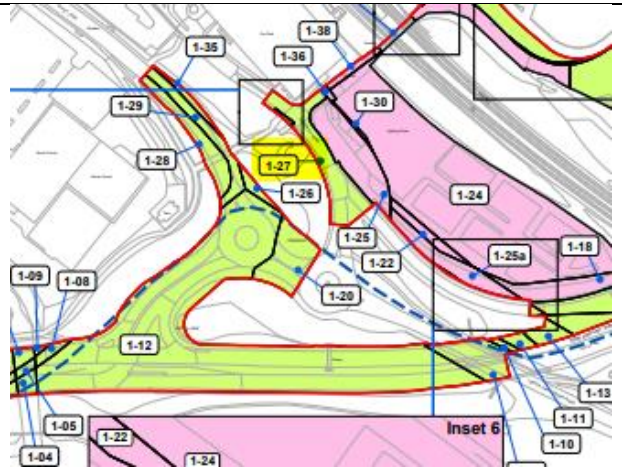
Plot No.	Rights Sought	Description of Land	Owner/Occupier/Rights	Details in draft DCO	BDBP comment
1-15	Temporary Possession	Temporary possession and use of 41 square metres of public road, slip road, footway and cycle path (New Airport Way, A1081)	Rights under conveyance dated 18 Jan 1974		**Owner/occupier**: LBC is the owner and occupier. **Current use:** NR have rights only under a conveyance – the conveyance is not available for checking. **Impact of Proposed Development on NR Operational Land:** Temporary possession is being sought for highway works on a public road (Work No. 6e(b)). Minimal impact is predicted. Potential amendments to white lining (road markings) within the existing A1081 highway boundary only. Potential temporary disruption to highway network whilst A1081 New Airport Way / Gipsy Lane junction amendments are undertaken, but no direct station / railway impact.
1-21	Temporary Possession	Temporary possession and use of 1387 square metres of bridge	Occupier		**Owner/occupier**: LBC is the owner up until the halfway point of the highway width, the owner for remaining half is not known. NR are the occupiers in respect of the

		carrying public road and footway (New Airport Way, A1081) over railway (Harpenden and Luton Airport Parkway), works and land Borough of Luton			railway, LBC are the occupiers in respect of the adopted highway. **Current use:** A bridge over operational railway. **Impact of Proposed Development on NR Operational Land:** Temporary possession is being sought with regard to highway works on a public road (Work No. 6e(b)). The BoR excludes the track itself so only extends to highway surface works on bridge. Minimal impact is predicted. Potential amendments to white lining (road markings) within the existing A1081 highway boundary only. Potential temporary disruption (traffic management) to highway network whilst A1081 New Airport Way / Gipsy Lane junction amendments are undertaken, but no direct station / railway impact. No amendments to existing bridge parapets or bridge deck.

1-22	Permanent Land	All interest and rights in 296 Square metres of woodland (New Airport Way) Borough of Luton	Rights under conveyance dated 18 Jan 1974		**Owner/occupier**: LBC is the owner and occupier. **Current use:** NR have rights only under a conveyance – the conveyance is not available for checking. **Impact of Proposed Development on NR Operational Land:** Permanent rights are sought in relation to Work No.4g: multi-storey car park up to 1000 parking spaces. Minimal impact is predicted. Works associated with construction of the staff-only MSCP (Work 4g). Permanent land acquisition. Off-road construction activity, so disruption to station access expected to be minimal.
1-25	Permanent Land	All interest and rights in 1416 Square metres of hardstanding, Woodland and Outbuilding (Parkway Road) Borough of Luton	Owner and Occupier		**Current use:** Unknown **Impact of Proposed Development on NR Land:** Permanent rights are sought in relation to Work No.4g: multi-storey car park up to 1000 parking spaces. Minimal impact is predicted. Works associated with construction of the staff-only MSCP (Work 4g). Permanent land acquisition. Off-road

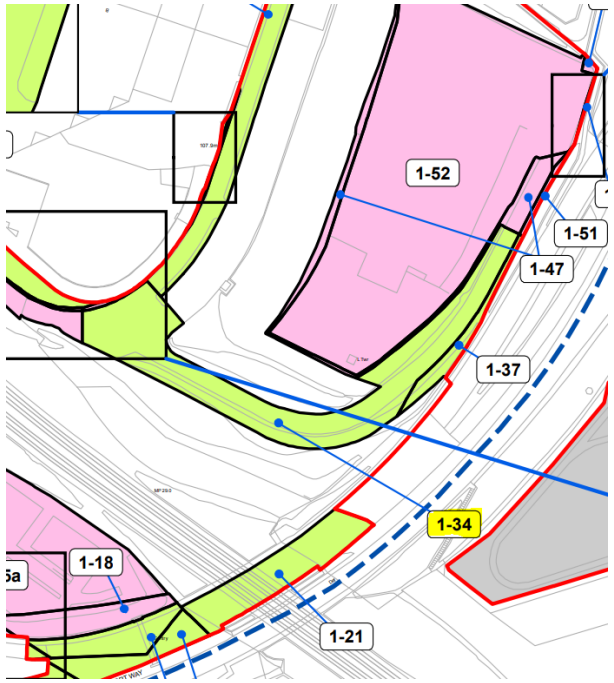
					construction activity, so disruption to station access expected to be minimal.
1-25a	Permanent Land	All interest and rights in 772 square metres of woodland (New Airport Way) Borough of Luton	Rights under conveyance dated 18 Jan 1974		**Owner/occupier:** LBC is the owner and occupier. **Current use:** NR have rights only under a conveyance – the conveyance is not available for checking. The land use is currently wooded embankment. **Impact of Proposed Development on NR Land:** Permanent land is sought in relation to Work No.4g: multi-storey car park up to 1000 parking spaces. Minimal impact is predicted. Works associated with construction of the staff-only MSCP (Work 4g). Permanent land acquisition. Off-road construction activity, so disruption to station access is expected to be minimal.

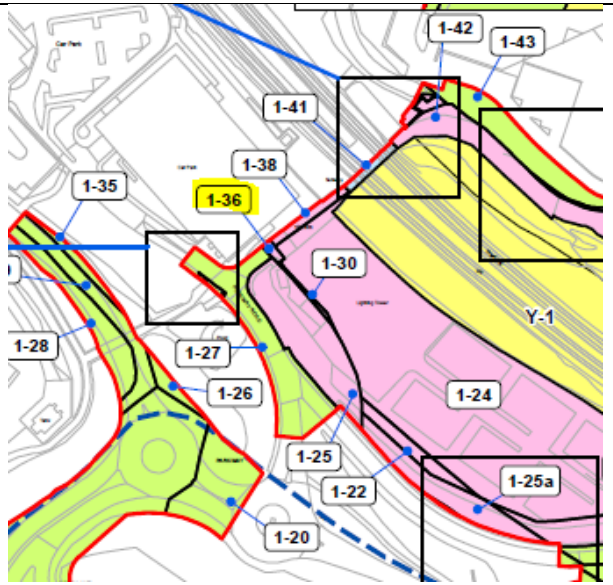
1-26	Temporary Possession	Temporary possession and use of 157 square metres of woodland (Gipsy Lane) Borough of Luton	Owner (in respect of subsoil up to halfwidth of highway)		**Remaining owners:** LBC and CBC **Current use**: Limited soil rights under the ad medium filum rule. **Impact of Proposed Development on NR land / rights**: Temporary possession is sought relating to highway works on a public road (Work No. 6e(b)). Minimal impact is predicted. Likely no impact to this plot, but if so, only minor impacts associated with proposed improvements to Gipsy Lane / Lower Harpenden Road / A1081 link road roundabout- minor kerbline realignment, carriageway resurfacing and road marking changes. Disruption to station access expected to be minimal. Junction upgrade works at adjacent Gipsy Lane / Lower Harpenden Road roundabout will likely require traffic management.

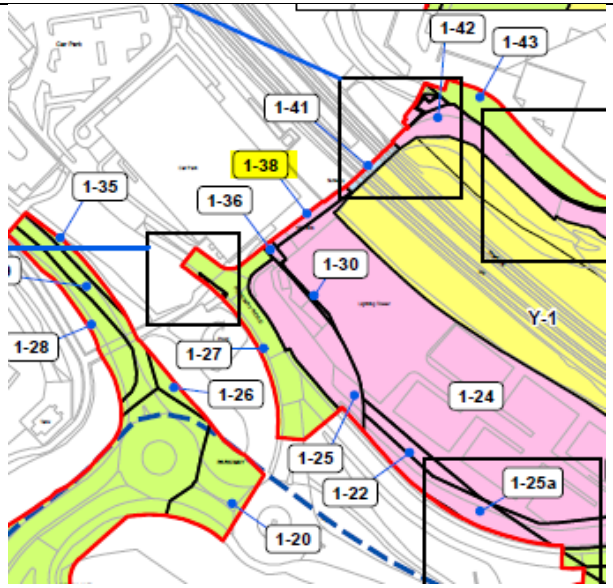
1-27	Temporary Possession	Temporary possession and use of 1407 square metres of public roads, footway and verges (Parkway Road and Vauxhall Road)	Owner and Occupier		**Current use:** Unknown **Impact of Proposed Development on NR land / rights:** Plot 1-27 is part of the access road into Parkway Station. Temporary possession sought relating work No.4g (staff-only multi-storey car park up to 1000 parking spaces). Works associated with this land relate to construction. Minimal impact is predicted. Temporary possession of plot associated with the creation of a new / improved site access into the proposed staff-only MSCP (Work 4g), and provision of relevant signage / road markings etc. Temporary disruption to station access during construction of car park access / MSCP construction (temporary roadworks), however access to Luton Parkway station and the existing Luton Parkway MSCP would be retained at all times.
1-31	Temporary Possession	Temporary Possession and use of 3 square metres of public road, footway and verge	Rights under conveyance dated 18 Jan 1974		**Owner:** CBC **Current use:** NR have rights only under a conveyance – the conveyance is not available for checking. **Impact of Proposed Development on NR land /**

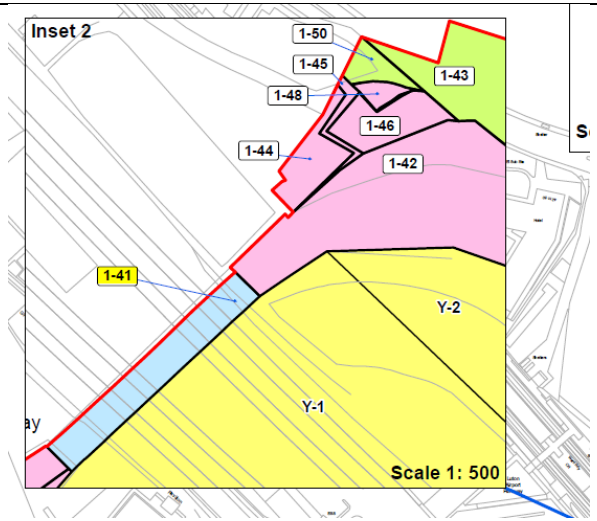
		(Parkway Road)			**rights:** Temporary possession sought relating to work No.4g (staff-only multi-storey car park up to 1000 parking spaces). Minimal impact is predicted. Temporary possession of plot associated with the creation of a new / improved site access into the proposed staff-only MSCP (Work 4g). Temporary disruption to station access during construction of car park access / MSCP construction (temporary roadworks), however access to Luton Parkway station and the existing Luton Parkway MSCP would be retained at all times.
1-32	Temporary Possession	Temporary possession and use of 22 square metres of public road, footway and verge (Parkway Road) Borough of Luton	Owner (in respect of subsoil up to half width of highway)		**Current use:** Unknown. **Owner / Occupier:** LBC , NR and CBC have joint limited soil rights under the ad medium filum rule **Current use:** NR to confirm. **Impact of Proposed Development on NR land / rights:** Temporary possession relating to work No.4g (staff-only multi-storey car park up to 1000 parking spaces). Minimal impact is predicted. Temporary possession of plot associated with the creation of a new / improved site access into

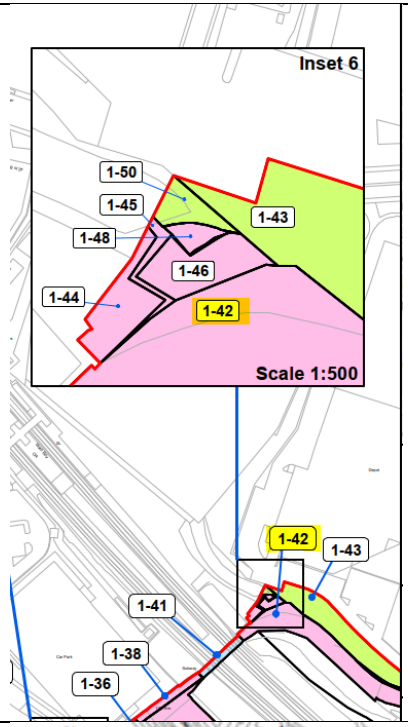
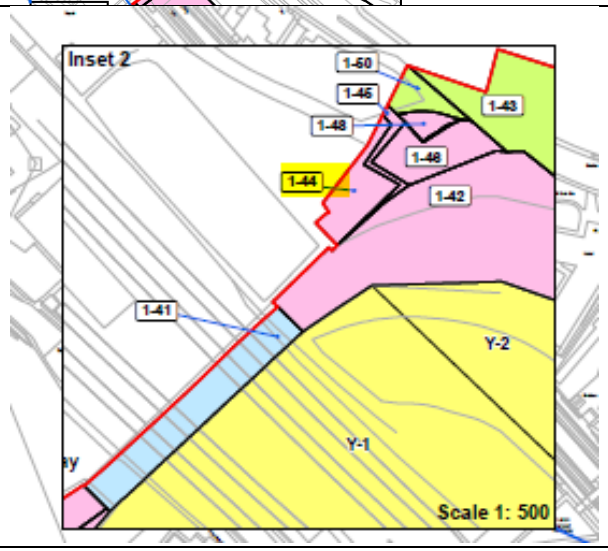
					the proposed staff-only MSCP (Work 4g). Temporary disruption to station access during construction of car park access / MSCP construction (temporary roadworks), however access to Luton Parkway station and the existing Luton Parkway MSCP would be retained at all times.
1-33	Temporary Possession	Temporary possession and use of 7 square metres of public road, footway and verge (Parkway Road) Borough of Luton	Rights under conveyance dated 18 Jan 1974		**Owner:** CBC **Current use:** NR have rights only under a conveyance – the conveyance is not available for checking. The land use is deemed a 'road' which is Part of Parkway Road. **Impact of Proposed Development on NR Operational Land:** Temporary possession I sought relating to Work No.4g (staff-only multi-storey car park up to 1000 parking spaces). Minimal impact is predicted. Temporary possession of plot associated with the creation of a new / improved site access into the proposed staff-only MSCP (Work 4g). Temporary disruption to station access during construction of car park access / MSCP construction (temporary roadworks), however access to Luton Parkway station and the

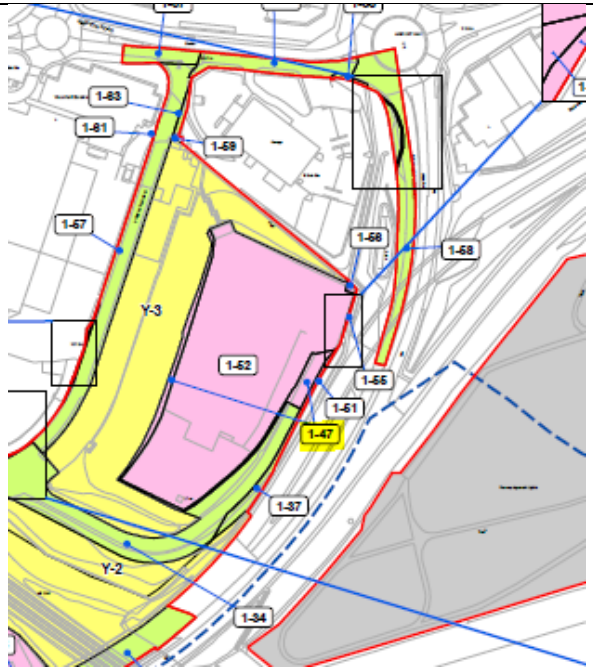
					existing Luton Parkway MSCP would be retained at all times.
1-34	Temporary Possession	Temporary possession and use of 4092 square metres of private road and verge (Vauxhall Road), hardstanding and embankment Borough of Luton	Rights in respect of rights of access		**Owner:** LLAL **Current use:** NR only have cat-2 rights of access, the land is currently a private road and verge. **Impact of Proposed Development on NR land / rights:** temporary possession is sought relating to work No.4h (staff-only surface car park up to approx 470 parking spaces). Minimal impact predicted. Temporary possession of plot associated with the creation of a new / improved site access into the proposed staff-only surface access car park (Work 4h). Limited to highway resurfacing, white lining (road markings), kerbline amendments etc. No impact to station operation. Access along existing road (Vauxhall Road) would be retained during any works, to retain access to existing properties / rail access etc.

1-36	Permanent Land	All interests and rights in 44 square metres of public road and footway (Vauxhall Road) Borough of Luton	Owner (in respect of subsoil up to half width of highway)		**Owner:** LLAL, LBC, NR and unknown in respect of subsoil up to half width of highway under the ad medium filum rule **Current Use:** Unknown. **Impact of Proposed Development on NR Operational Land / rights:** Permanent possession is sought relating to Work No.4g (staff-only multi-storey car park up to 1000 parking spaces). Minimal impact is predicted. Permanent possession of plot associated with the creation of a new / improved site access into the proposed MSCP (Work 4g), and improvements to underpass associated with pedestrian footway beneath railway lines. Minimal impact to station operation.

1-38	Permanent Land	All interests and rights in 156 square metres of private road (Vauxhall Road) Borough of Luton	Rights in respect of rights of access		**Owner:** LLAL, NR have rights of access **Current Use:** NR have access rights and the land is currently used as a private road / underpass **Impact of Proposed Development on NR land / rights:** Permanent land is being sought. Minimal impact is predicted. Permanent possession of plot associated with the creation of a new / improved highway access into the proposed staff-only MSCP (Work 4g), and improvements to underpass associated with pedestrian footway beneath railway lines. Minimal impact to station operation.
1-41	Permanent rights	Acquisition of rights over 108 square metres of private road beneath bridge carrying railway (Harpenden and Luton Airport Parkway),	Owner (presumed freeholder) & Rights in respect of rights of access	The rights and restrictive covenants to construct, protect, operate, access and maintain the private road beneath the bridge carrying the railway, including the right to erect lighting within the subway crossing, and to maintain or upgrade the surface; and the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without plant and machinery, for all purposes in connection with the use of the footpath as a means of access between the adjacent car parks.	**Current use:** Unknown. **Impact of Proposed Development on NR land / rights:** Permanent rights are being sought in relation to public access using the existing tunnel. Permanent rights are being sought rather than permanent land as the access required for the new **staff-only** car park (Work 4g) goes under the railway. New rights are being sought for users

		works and land Borough of Luton			of the airport to use the tunnel, and to allow for minor works to improve the tunnel for pedestrians (e.g. surfacing upgrades, improved lighting within the underpass).This is an existing tunnel and so we deem the impact to be minimal. As above, works within the underpass are minor in scale and limited to surfacing / lighting improvements. Minimal impact to station operation as the underpass will only be for pedestrian usage to connect the car park and Luton DART station (potential to retain controlled vehicular access- lockable bollards etc- if NR require this for maintenance purposes).

1-42	Permanent rights	Acquisition of rights over 1080 square metres of private road and verge (Vauxhall Road) beneath railway (Luton Airport Parkway to Luton Airport Terminal), works and land	Rights in respect of rights of access			**Owner:** LLAL **Current use:** NR have rights of access. **Impact of Proposed Development on NR Operational Land:** Minimal impact is predicted. Very minor works in this area, potentially including carriageway resurfacing, and the creation of pedestrian footway associated with Work 4h (staff only car park). Unlikely to be any impact on station operation. Controlled vehicular access to underpass would be retained if required for maintenance purposes.
1-44	Permanent Land	All interests and rights in 45 square metres of scrubland and supporting column beneath railway (Luton Airport Parkway to Luton Airport Terminal), works and land	Rights in respect of restrictive covenants contained in a Transfer dated 14 December 2017 and a Conveyance dated 31 December 1921			**Owner:** LLAL is owner, NR have rights under the conveyance – the conveyance is not available for inspection. **Current Use**: Currently used as Land/Scrubland. **Impact of Proposed Development on NR land / rights**: Permanent land is being sought is respect of Work 4g (staff-only MSCP providing up to approx. 1,000 parking spaces). Minimal impact is predicted.

		Borough of Luton			Minor landscaping works associated with the upgraded underpass footway / pedestrian route. No impact to station operation.
1-47	Permanent Land	All interests and rights in 946 square metres of hardstanding, fencing and scrubland (New Airport Way) Borough of Luton	Rights in respect of rights of access		**Owner:** LLAL, NR have rights under the conveyance – the conveyance is not available for inspection. **Current Use**: Rights of access and is currently Hardstanding/ Scrubland and part of private road. **Impact of Proposed Development on NR land / rights**: Permanent land is being sought in relation to Work 4h (staff-only surface car park up to approx 470 parking spaces). Minimal impact is predicted. The works on this plot are related to Work 4h, and are generally limited to carriageway resurfacing, kerbs, white lining (road markings), signage and minor amendments to the car park access etc. No impact to station operation.

APPENDIX 3 – APPLICANT'S COMMENTARY ON, AND AMENDMENTS TO, THE PREFERRED PROTECTIVE PROVISIONS OF NETWORK RAIL

Network Rail Infrastructure Limited

Standard Protective Provisions for inclusion in Statutory Orders

~~SCHEDULE [ ]7 Article [ ]~~

PROTECTIVE PROVISIONS

PART ~~[~~7~~]~~

FOR THE PROTECTION OF ~~RAILWAY INTERESTS~~ NETWORK RAIL INFRASTRUCTURE LIMITED

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail Infrastructure Limited. ~~and, in the case of paragraph [15] of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.~~

2. In this Part of this Schedule—

~~"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;~~

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, England SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging

Commented [KW1]: Deletion of "and, in the case of paragraph [15] of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph" as a result of amendment of the indemnity paragraph.

Commented [KW2]: Deletion of "asset protection agreement" within the definitions and reference to it within original paragraph 3(7): the Applicant does not agree with an obligation in the provisions to enter into an "asset protection agreement" prior to carrying out works. The Protective Provisions provide adequate protection for Network Rail, especially considering the minimal impact of the Proposed Development on Network Rail's land and interests. Additionally, it is not commonplace to include direct reference to asset protection agreements within railway Protective Provisions.

proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and-

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licencee of Network Rail for the purposes of such railway or works, apparatus or equipment;

"regulatory consents" means any consent or approval required under:

(a) the Railways Act 1993;

(b) the network licence; and/or

(c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

Approval of Plans

Commented [KW3]: Inserted for clarity.

3. (1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4. (1) The undertaker must not exercise the powers conferred by —

(a) article 3 (*development consent granted by the Order*);

(b) article 4 (*maintenance of authorised development*);

(c) article 19 (*discharge of water*);

(d) article 21 (*authority to survey and investigate the land*);

(e) article 24 (*compulsory acquisition of land*);

(f) article 27 (*compulsory acquisition of rights*);

(g) article 31 (*acquisition of subsoil only*);

(h) article [x] (*power to override easements and other rights*);

(i) article 33 (*temporary use of land* for carrying *out the authorised development*);

(j) article 34 (*temporary use of land for maintaining the authorised development*);

(k) article 36 *statutory undertakers*);

(l) article [x] (*private rights of way*);

(m) article [x] (*felling or lopping of trees or shrubs*);

(n) article [x] (*trees subject to tree preservation orders*);

(o) the powers conferred by section 11(3) (power of entry) of the 1965 Act;

(p) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;

(q) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 16;

(r) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

(s) other provisions where the exercise of the powers under that provision would impact on railway property

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

~~(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 36 (*statutory undertakers*), or article 28 [*private rights over land*], in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.~~

~~(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.~~

~~(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.~~

~~(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).~~

~~(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.~~

5. (1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration (article 52).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their approval or disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker and., ~~i~~If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is ~~shall be~~ deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to

Commented [KW4]: Reasons for deletion: Requiring consent from Network Rail before exercising powers under articles and legislation noted in the original paragraph 4 will cause unnecessary delay and is again disproportionate considering the impacts of the Proposed Development to Network Rail land. The Applicant has agreed to supply Network Rail with plans for approval prior to the commencement of any 'specified works'; this provides Network Rail with effective means of controlling aspects of the authorised development that would interact with Network Rail's interests.

Additionally, restrictions on compulsory acquisition powers are unnecessary as the compulsory acquisition process already allows for any disagreements on commercial matters to be resolved in a tried and tested way, through the referral of compensation disputes to the Upper Tribunal to be determined in accordance with the compensation code.

The Applicant must retain compulsory acquisition powers in respect of land where voluntary agreement has not yet been obtained or in the circumstance where voluntary agreement may later prove to have granted insufficient rights. Moreover, compulsory powers are more readily enforceable so reducing additional risk, cost and delay.

There is no provision within the Planning Act 2008 which requires an Applicant to secure Network Rail's consent to the exercise of Order powers (in contrast with for instance, the position of the Crown where such provision has been made in section 135 of the Planning Act 2008) and the Applicant is not persuaded of any basis on which such consent ought to required.

Commented [KW5]: Inserted for clarity.

be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

Commented [KW6]: Inserted to ensure any additional protective works being requested is reasonable.

6. (1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 735;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is ~~shall be~~ caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any direct loss which it may sustain by reason of any such damage, interference or obstruction.

Commented [KW7]: Reference to 'loss' has been amended to 'direct loss', as the Applicant does not agree to take responsibly for consequential loss. That does not prevent NR pursuing such claims under common law.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its

servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must-

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and the undertaker's~~its~~ agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as undertaker~~its~~ may reasonably require with regard to such works or the method of constructing them.

9. (1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice which is no later than 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice including details of the reasonable cost of carrying out - and in the case of any permanent alterations or additions, maintaining, working and, when necessary, renewing – those alterations or additions in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

Commented [KW8]: Amendments included for clarity in terms of the notice procedure.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the reasonable opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph [4~~5~~(3)], pay to Network Rail all reasonable and proper expenses incurred by Network Rail ~~to which Network Rail may be put~~ and compensation for

Commented [KW9]: Amendments made to make clear that the engineer's opinion must be reasonable, in line with original paragraph 5(1) and to clarify the Applicant is only responsible for compensating for reasonable and proper expenses incurred by Network Rail.

any direct loss which Network Rail it may suffers by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph [9~~10~~(a)] provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses properly and reasonably incurred by Network Rail—

Commented [KW10]: amendments to make clear that the engineer's opinion must be reasonable, in line with original paragraph 5(1) and to clarify the Applicant is only responsible for compensating for reasonable and proper expenses incurred by Network Rail.

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the reasonable approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the reasonable opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11. (1) In this paragraph-

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

Commented [KW11]: The Applicant reinserted this at the request of Network Rail.

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all reasonable measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

Commented [KW12]: Amendment made to make clear the Applicant is only under an obligation to take all "reasonable" measures.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)-

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter where reasonably required must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

Commented [KW13]: Amendments made to make clear continued consultation is only required where reasonable.

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph [4~~5~~(1)] has effect subject to the sub-paragraph.

(6) If at any time prior to the completion of a specified work ~~authorised development~~ and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the specified work ~~authorised development~~ causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally

Commented [KW14]: This paragraph replaces the original paragraph submitted by Network Rail at Deadline 7 the reason for this being there is already an obligation on the Applicant to make appropriate arrangements to verify the effectiveness of measures preventing EMI under paragraph 10(3).

(such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the undertaker's works ~~apparatus~~ causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph(5)) to the Network Rail's apparatus.

~~Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.~~

(7) In the event of EMI having occurred –

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's works ~~apparatus~~ in the investigation of such EMI;

Commented [KW15]: made for greater clarity and drafting precision.

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; ~~and~~

(c) Network Rail must make available to the undertaker any additional ~~material~~ information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.; ~~and~~

Commented [KW16]: Deleted to avoid ambiguity and not required as Network Rail are only under an obligation to provide the information if reasonable..

~~(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.~~

Commented [KW17]: Deleted, as this paragraph is too wide ranging as drafted. The Applicant is already under a duty to provide preventative measures with regard to EMI under paragraph 11.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 5~~6~~.

~~(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.~~

(~~9~~10) For the purpose of paragraph ~~7~~7 (a) any modifications to Network Rail's apparatus under this paragraph is~~shall be~~ deemed to be protective works referred to in that paragraph.

(~~10~~11) In relation to any dispute arising under this paragraph the reference in article [x] (Arbitration) to the Secretary of State ~~Institution of Civil Engineers~~ shall be is to be read as a reference to the Institution of Engineering and Technology.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives reasonable notice to the undertaker informing it that the state of maintenance of any part of the specified work reasonably appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such reasonable notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail has ~~may~~ properly and reasonably incurred in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that a minimum of 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15. (1)The undertaker must pay to Network Rail all reasonable and properly incurred costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article ~~[~~48~~]~~ *(no double recovery)*) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or

Commented [KW18]: Deleted, as the Applicant provides adequate assurances with regard to compensation to Network Rail's reasonable and properly incurred costs, charges, damages and expenses within the protective provisions, and more specifically within the 'catch all' paragraph 15. The inclusion of an additional indemnity paragraph is overly onerous and not accepted by the Applicant.

Commented [KW19]: Made as a result of further engagement with Network Rail and at Network Rail's request.

Commented [KW20]: Amendments made to ensure reasonable notice is given and reasonable conclusions on adverse affects are formed.

Commented [KW21]: Amended to make clear that the Applicant is only responsible for expenses properly and reasonably incurred by Network Rail, which provides adequate protection for NR.

Commented [KW22]: Amendments included for clarity in terms of the notice procedure.

Commented [KW23]: Amended to make clear that the Applicant is only responsible for expenses properly and reasonably incurred by Network Rail, which provides adequate protection for NR.

(b) by reason of any act or omission of the undertaker or of any person in undertakerits employ or of undertakerits contractors or others whilst engaged upon a specified work;;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the specified work; authorised development;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the specified work; authorised development by the undertaker or any person in its employ or of its contractors or others;

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the specified work; authorised development

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision does shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must –

(a) give the undertaker reasonable written notice of any such claims or demands as soon as reasonably possible after Network Rail becomes aware of any such claim or demand;

(b) not admit liability or make any settlement or compromise of such a claim or demand without the prior consent of the undertaker (which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand); and

(c) take such all reasonable steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands; and

Commented [KW24]: Amendments to ensure the Applicant is provided with reasonable notice and information, and an opportunity to provide representations that Network Rail should consider, with regard to a claim or demand, or potential claim or demand, that the Applicant is responsible for paying. Further amendments are made at original paragraph 15(2)(b) to ensure Network Rail does not conduct itself in a way that could exacerbate any claim or demand.

(d) keep the undertaker informed in relation to the progress of any such claims and demands and pay due regard to the undertaker's reasonable representations in relation to them.

(3) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, except that the sums payable by the undertaker under that sub-paragraph include a sum equivalent to the relevant costs in circumstances where—

(a) Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between the Network Rail and a train operator; and

(b) the existence of that agreement and the extent of Network Rail's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the undertaker, but not otherwise.

~~The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.~~

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs ~~shall~~, in the event of default, is to be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule

Commented [KW25]: New sub-paragraph inserted at (3) which reiterates the Applicant is not responsible for any indirect or consequential loss or loss of profits save in the circumstances noted at sub-paragraph (3). The inclusion of a requirement to provide the Applicant with operator agreements provides transparency to the Applicant, providing them with the knowledge of any potential costs that could arise, and is not overly onerous, especially considering only two train operating companies will be caught under the Proposed Scheme.

(including the amount of the relevant costs mentioned in paragraph 8315) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

20 The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 8 (transfer of benefit of Order) of this Order in relation to a specified work, and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) ~~the extent of the geographical area~~ the specified works to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

1921 The undertaker must no later than 28 days from the date that the documents referred to in

Commented [KW26]: This paragraph has been reinserted at Deadline 10 at Network Rail's request save that the notification provision has been limited to a transfer of powers in relation to a specified work. The Applicant considers this to be a reasonable and proportionate compromise.

Commented [KW27]: Amendment has been made to modernise the provision of electronic documents.

article 62 (certification of documents, etc.) are ~~plans~~ submitted to and certified by the Secretary of State in accordance with article ~~[~~50~~[~~ (certification of documents ~~plans~~ etc~~.) are certified by the Secretary of State~~ in accordance with article 50 (certification of documents etc), provide an electronic set of those documents ~~plans~~ to Network Rail in a form to be agreed with the undertaker.

22 In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 70(10)) ~~[11](11))~~ the ~~provisions of~~ in article 52 (arbitration) ~~shall not apply and] any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other)~~ is to be read as a reference to the President of the Institution of Civil Engineers.

Commented [KW28]: Amendment has been made as a result of further engagement with Network Rail, to align with their preferred arbitration process.

APPENDIX 4 – APPLICANT'S COMMENTARY ON, AND AMENDMENTS TO, THE PREFERRED PROTECTIVE PROVISIONS OF NATIONAL HIGHWAYS

PART 5

FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application, etc.

1.—(1) The provisions of this Part of this Schedule apply for the protection of National Highways of Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ (company registration number 09346363) and all successors in title and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) An agreement for the purpose of sub-paragraph (1) includes, but is not limited to, an agreement made under article 17 of this Order, or under the 1980 Act provided that the paragraph agreement expressly refers to this paragraph 1 of this schedule.

(3) Nothing in this Order affects or prejudices the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000([1]), or Town and Country Planning (General Permitted Development) (England) Order 2015([2]) which continues to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

2.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with subparagraph (2) the latter prevail.

(2) In this Part of this Schedule—

"as built information" means one electronic copy of the following information—

(a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;

(b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);

(c) product data sheets and technical specifications for all materials used;

(d) as constructed information for any utilities discovered or moved during the works;

(e) method statements for the works carried out;

(f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;

(g) organisation and methods manuals for all products used;

(h) as constructed programme;

(i) test results and records as required by the detailed design information and during construction phase of the project;

(j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;

(k) the health and safety file; and

such other information as is reasonably required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's Asset Data Management Manual as is in operation at the relevant time;

([1]) 2000 c. 38.

([2]) S.I. 2015/596.

"the bond sum" means the sum equal to 200% of the cost of carrying out the specified works (to include all costs plus any commuted sum) or such other sum agreed between the undertaker and National Highways;

"the cash surety" means the sum agreed between the undertaker and National Highways;

"commuted sum" means such sum calculated as provided for in paragraph 48 of this Part of this Schedule to be used to fund the future cost of maintaining the specified works;

"condition survey" means a survey of the condition of National Highways structures and assets within the Order limits that in the reasonable opinion of National Highways may be affected by the specified works;

"contractor" means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

"defects period" means the period from the date of the provisional certificate to the date of the final certificate which is to be no less than 12 months from the date of the provisional certificate;

"detailed design information" means such of the following drawings specifications and calculations as are relevant to the development—

(a) site clearance details;

(b) boundary, environmental and mitigation fencing;

(c) road restraints systems and supporting road restraint risk appraisal process assessment;

(d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways

(e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;

(f) pavement, pavement foundations, kerbs, footways and paved areas;

(g) traffic signs and road markings;

(h) traffic signal equipment and associated signal phasing and timing detail;

(i) road lighting (including columns and brackets);

(j) regime of California Bearing Ratio testing;

(k) electrical work for road lighting, traffic signs and signals;

(l) motorway communications as required by DMRB;

(m) highway structures and any required structural approval in principle;

(n) landscaping;

(o) proposed departures from DMRB standards;

(p) walking, cycling and horse riding assessment and review report;

(q) stage 1 and stage 2 road safety audits and exceptions agreed;

(r) utilities diversions;

(s) topographical survey;

(t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;

(u) health and safety information including any asbestos survey required by GG105 or any successor document; and

(v) other such information that may be reasonably required by National Highways to be used to inform the detailed design of the specified works;

"DBFO contract" means the contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which

Commented [BDBP1]: Applicant's Position: Following negotiation between the parties, the Applicant now accepts a bond sum of 200% on the face of the DCO, and requests that the ExA makes this change in its DCO as recommended to the Secretary of State.

are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

"DMRB" means the Design Manual for Roads and Bridges or any replacement or modification of it;

"final certificate" means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 46;

"the health and safety file" means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction (Design and Management) Regulations 2015([3]) (or such updated or revised regulations as may come into force from time to time);

"highway operations and maintenance contractor" means the contractor appointed by National Highways under the DBFO contract;

~~"national highways mitigation works" means works comprised in work no. 6(e) of Schedule 1 of the Order namely;~~

~~(a) works to the M1 Junction 10 southbound merge including changing the merge layout type from 'Layout B – parallel merge' to a higher capacity 'Layout C –ghost island merge'; and~~

~~(b) works to the M1 Junction 10 northbound diverge including changing the diverge layout type from 'Layout B option 2 – Two-lane auxillary diverge' to a higher capacity 'Layout D option 1 – ghost island lane drop'.~~

"nominated persons" means the undertaker's representatives or the contractor's representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

"programme of works" means a document setting out the sequence and timetabling of the specified works;

"provisional certificate" means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 42 when it considers the specified works are substantially complete and may be opened for traffic;

"road safety audit" means an audit carried out in accordance with the road safety audit standard;

"road safety audit standard" means DMRB Standard HD GG119 or any replacement or modification of it;

"road space booking" means road space bookings in accordance with National Highways' Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

"Specification for Highways Works" means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;

"specified works" means so much of any work, including highway works and signalisation, authorised by this Order including any maintenance of that work, as is on, in, under or over the strategic road network for which National Highways is the highway authority;

"strategic road network" means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway;

"utilities" means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991([4]); and

Commented [BDBP2]: Applicant's Position:
Grampian conditions are objected to by the Applicant in the strongest possible terms. Consequently, these definitions which relate to Grampian conditions proposed by National Highways should not be accepted.

For the reasons set out in row ID7 of Table 2.12 of the Applicant's response to D10 submissions, the Applicant's position is that Grampian conditions are not necessary nor justified given the commitments in favour of National Highways in the TRIMMA process, which secures the delivery of mitigation works at the appropriate time.

([3]) S.I. 2015/51.

([4]) 1991 c. 22.

"winter maintenance" means maintenance of the road surface to deal with snow and ice.

(3) References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

(4) For the purposes of its obligations to procure a bond under this Part of this Schedule, the undertaker may procure a bond in relation to the specified works, and a separate bond in relation to the commuted sums, and in those circumstances references in this Part to "bond" and "bond sum" means both bonds together.

General

3. The undertaker acknowledges that parts of the works authorised by this Order affect or may affect parts of the strategic road network in respect of which National Highways have appointed the highway operations and maintenance contractor.

~~**4.** Requirements 33-34 of Schedule 2 of this Order shall be enforceable by National Highways.~~

Prior approvals and security

~~**5.**~~**4.**—(1) The ~~authorised development~~ specified works must not commence until—

(a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;

(b) the programme of works has been approved by National Highways;

(c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—

(i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);

(ii) details of the proposed road space bookings with National Highways;

(iii) the identity of the contractor and nominated persons;

(iv) to the extent that this is not provided for in the Construction and Traffic Management Plan ~~in a form that is acceptable to National Highways~~, a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;

(v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding;

(d) to the extent that this is not provided for in the Construction and Traffic Management Plan ~~in a form that is acceptable to National Highways~~, a scheme of traffic management relating to traffic management on the strategic road network has (where relevant) been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;

(e) stakeholder liaison has (where relevant) taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph 39(c)(iv);

(f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;

(g) the undertaker has agreed the estimate of the commuted sum with National Highways;

(h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;

(i) the undertaker has procured to National Highways collateral warranties in a form reasonably approved by National Highways from the contractor and designer of the specified works in favour

Commented [BDBP3]: Applicant's Position:
As noted above, Grampian conditions are strongly opposed.

Furthermore, there is no requirement for an enforcement provision. For the reasons set out in the Applicant's Response to D10 submissions, National Highways can enforce commitments in its favour in the DCO via arbitration.

Commented [BDBP4]: Applicant's Position:
The use of the term "authorised development" is opposed.

This would have the effect of requiring all highway works - for the duration of the entire 20+ project - to be approved before the Applicant has commenced any development. This is completely unreasonable and indeed infeasible and undeliverable for both the Applicant and National Highways. For highways due in Phases 2a and 2b (mid 2030s onwards) it is simply not possible to comply with (1)(a) to (j) in 2023 / 2024, when the project would intend to commence.

This provision should apply to "specified works", so that it is engaged only when a phase of highway works comes forward and applies to each separate phase.

Commented [BDBP5]: Applicant's Position:
NH is a consultee on the CTMP under Schedule 2, approved by the relevant LPA, and should not have the ability to circumvent it.

of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and

(j) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways reasonably considers will be affected by the specified works, has been agreed in writing by National Highways.

(2) The undertaker must not exercise—

(a) article 4 (maintenance of authorised development);

(b) article 10 (street works);

(c) article 11 (power to alter layout, etc., of streets);

(d) article 12 (construction and maintenance of new, altered or diverted streets);

(e) article 13 (temporary closure and restriction of use of streets);

(f) article 14 (permanent stopping up or public rights of way);

(g) article 15 (access to works);

(h) article 16 (traffic regulation);

(i) article 19 (discharge of water);

(j) article 20 (protective works to buildings) insofar as this relates to buildings owned or operated by National Highways;

(k) article 21 (authority to survey and investigate the land);

(l) article 22 (felling, lopping and removal of trees, shrubs and hedgerows);

(m) article 33 (temporary use of land for carrying out the authorised development); or

(n) article 34 temporary use of land for maintaining the authorised development),

of this Order, over any part of the strategic road network without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and/or submit a scheme of traffic management for National Highways' approval.

(3) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1) or (2).

(4) National Highways must provide the undertaker with a list of all the structures, assets and pavements to be subject to both a condition survey and regime of monitoring pursuant to sub-paragraph (1)(i) and paragraph 44(1) of this Part of this Schedule before the first condition survey is conducted and the regime of monitoring is implemented.

(5) Any approval or consent of National Highways required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) must be given in writing;

(c) in the case of a refusal must be accompanied by a statement of grounds for refusal;

(d) ~~shall be~~is deemed to have been refused if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways within 2 months of receipt of the information to which the request for further particulars relates; and

(e) may be subject to any conditions as National Highways reasonably considers necessary.

(6) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately along with collateral warranties in a form agreed by National Highways acting reasonably.

(7) Any change to the detailed design of the specified works must be approved by National Highways in accordance with sub-paragraph (1) of this Part of this Schedule.

Construction of the specified works

~~6.~~5.—(1) The undertaker must

(a) ~~give National Highways 28 days' notice in writing of the date on which the authorised development will start unless otherwise agreed by National Highways;~~ as soon as reasonably practicable following service of notice under Article 44(1), inform National Highways that such notice has been served;

(b) give National Highways 28 days' notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways; and

(c) give National Highways as much notice as is reasonably practicable of any element of the authorised development that the undertaker reasonably considers would significantly affect the strategic road network or the level of traffic on the strategic road network.

Commented [BDBP6]: Applicant's Position:
The Applicant understands from discussions with National Highways that this is accepted by them. It mirrors the notification process for local authorities in article 44(2).

(2) The undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out of the specified works and no specified works for which a road space booking is required is to commence without a road space booking having first been secured from National Highways, such road space booking not to be unreasonably withheld or delayed.

(3) The specified works must be carried out by the undertaker to the reasonable satisfaction of National Highways in accordance with—

(a) the relevant detailed design information and programme of works approved pursuant to paragraph 39(1) or as subsequently varied by agreement between the undertaker and National Highways;

(b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016([5]) save to the extent that exceptions from those standards apply which have been approved by National Highways; and

(c) all aspects of the Construction (Design and Management) Regulations 2015([6]) or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the reasonable satisfaction of National Highways.

(4) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works for the purposes of inspection and supervision of the specified works.

(5) If any part of the specified works is constructed—

(a) other than in accordance with the requirements of this Part of this Schedule; or

(b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the reasonable satisfaction of National Highways.

(6) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

([5]) S.I. 2016/362.

([6]) S.I. 2015/51.

(7) If within 28 days on which a notice under sub-paragraph (5) or sub-paragraph (6) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users of the strategic road network, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure incurred by National Highways in so doing, such sum to be payable within 30 days of demand.

(8) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing.

(9) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the reasonable satisfaction of National Highways.

(10) During the construction of the specified works the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 39(1)(h) and the undertaker must carry out such maintenance at its own cost.

(11) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 39(1)(b) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

~~(12) Where in the opinion of National Highways the operation of the airport following construction of any authorised development is leading to or may lead to an increase in traffic on the strategic road network beyond tolerable limits, National Highways may serve on the undertaker written notice to cease the operation of all or any part of such specified works until either the national highways mitigation works have been completed or capacity on the strategic road network is otherwise increased.~~

~~(13) In the event of a notice being served pursuant to paragraph 12, the undertaker will suspend the operation of all authorised development stated in the notice until either the national highways mitigation works have been completed or National Highways serves written notice on the undertaker confirming that capacity on the strategic road network has increased.~~

Payments

~~7.~~**6.**—(1) The undertaker must pay to National Highways a sum equal to the whole of any costs and expenses which National Highways reasonably incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

(a) the checking and approval of the information required under paragraph 40(1) and any advice given to the undertaker relating to the design, specification and programme of the specified works generally;

(b) the supervision of the specified works;

(c) the checking and approval of the information required to determine approvals under this Order;

(d) all reasonable legal, technical and administrative costs and disbursements incurred by National Highways in connection with ~~the Order and~~ sub-paragraphs (a)-(c); and

(e) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising "the NH costs".

(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways reasonably believe will be properly and necessarily incurred by

Commented [BDBP7]: Applicant's Position
These sub-paragraphs cannot be accepted. It is entirely disproportionate and unreasonable for NH to be granted a reserve power to cease the operation of a consented development on the basis that NH considers it is or "may" be leading to an increase in traffic on the network, in combination with other developments which would not be subject to such a restriction.

On that point, the Applicant is not aware of any consented development, anywhere in the country, which is subject to a power under which NH can compel that development to cease.

This proposal by National Highways fails any test of reasonableness or necessity. It would also have the gravest commercial implications for the airport's expansion plans. It is also undeliverable in the context of an airport - there is simply no commercial or practical reality in which an international airport can simply cease operations (given allocated slots for airlines, and committed passenger bookings) pending the delivery of highway mitigation works.

The Applicant's GCG regime and TRIMMA process will ensure no unacceptable impacts are caused on the SRN.

Commented [BDBP8]: Applicant's Position:
This wording is imprecise and unclear in effect. The Applicant has made what it considers to be a proportionate and reasonable commitment to cover NH's costs under this provision.

National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) National Highways must provide the undertaker with a fully itemised schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs attributable to the specified works prior to commencing the specified works and in any event prior to National Highways incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) to (4) within 30 days of the issue of the provisional certificate issued pursuant to paragraph 42(4).

(6) Within 28 days of the issue of the final account—

(a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it;

(b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional certificate

~~8.~~7.—(1) Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the specified works, National Highways will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any reasonable requirements of National Highways prior to reopening the strategic road network.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable—

(a) inspect the specified works; and

(b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

(a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways, such approval not to be unreasonably withheld or delayed;

(b) the specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to sub-paragraph (3)(b) have been completed to the reasonable satisfaction of National Highways;

(c) the as built information has been provided to National Highways; and

(d) the undertaker has paid the commuted sum to National Highways,

National Highways must promptly issue the provisional certificate.

(5) The undertaker must submit a stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard.

(6) The undertaker must comply with the findings of the stage 4 road safety audit and must pay all reasonable costs of and incidental to such and provide updated as-built information to National Highways.

Opening

~~9.~~8. The undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 14 days of that date.

Final condition survey

~~10.~~9.—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 42(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval.

(2) The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(3) If the re-surveys carried out pursuant to paragraph 44(1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(4) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.

(5) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to paragraph 44(1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing.

(6) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

(7) Any approval of National Highways required under this paragraph must not be unreasonably withheld or delayed.

Defects period

~~11.~~10.—(1) The undertaker must at its own expense remedy any defects in the strategic road network as are reasonably required by National Highways to be remedied during the defects period.

(2) All identified defects must be remedied in accordance with the following timescales—

(a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);

(b) in respect of matters which National Highways reasonably considers to be serious defects or faults, within 14 days of receiving notification of the same; and

(c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(3) Following the expiry of the defects period National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

Final certificate

~~12.~~11.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable—

(a) inspect the strategic road network; and

(b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.

(3) The undertaker must carry out such works notified to it pursuant to sub-paragraph ~~46~~(2).

(4) When National Highways is reasonably satisfied that—

(a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph ~~11~~(2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the reasonable satisfaction of National Highways; and

(b) the NH costs have been paid to National Highways in full,

National Highways must issue the final certificate after which the bond is to~~shall~~ be released in full.

(5) The issue of a final certificate by National Highways amounts to an acknowledgement by National Highways that the construction, alteration or diversion (as the case may be) of the highway has been completed to its reasonable satisfaction for the purposes of article 12 of this Order.

(6) The undertaker must pay to National Highways within 28 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to these provisions.

Security

~~13.~~12. The specified works must not commence until—

(a) the undertaker procures that the specified works are secured by a bond from a bondsman first approved by National Highways in the agreed form between the undertaker and National Highways to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; and

(b) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 41 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule.

Commuted sums

~~14.~~13.—(1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, prior to the commencement of the specified works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provisional certificate.

Insurance

~~15.~~14. Prior to the commencement of the specified works the undertaker must ensure public liability insurance is in place with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

Indemnity

~~16.~~15.—(1) Subject to sub-paragraphs (2) and (3) the undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

(2) Sub-paragraph (1) does not apply to any costs, claims, expenses, damages, losses and liabilities which were caused by or arose out of the negligence or default of National Highways or its officers, servants, agents or contractors or any person or body for whom it is responsible.

(3) If any person makes a claim or notifies an intention to make a claim against National Highways which may reasonably be considered likely to give rise to a liability under this paragraph then National Highways must—

(a) as soon as reasonably practicable give the undertaker reasonable notice of any such third party claim or demand, specifying the nature of the indemnity liability in reasonable detail; and

(b) not make any admission of liability, agreement or compromise in relation to the indemnity liability without first consulting the undertaker and considering their representations.

(4) National Highways must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph applies where it is within National Highway's reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Highway's control.

(5) National Highways must provide an explanation of how any claim has been mitigated or minimised or where mitigation or minimisation is not possible an explanation as to why, if reasonably requested to do so by the undertaker and only in relation to costs that are incurred which are within National Highways' direct control.

Maintenance of the specified works

~~17.~~16.—(1) The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required is to commence without a road space booking having first been secured, such road space booking not to be unreasonably withheld or delayed.

(3) The undertaker must comply with any reasonable requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 14 days' in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph 43 apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Expert determination

~~18.~~17.—(1) Article 52 (arbitration) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the

difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;

(c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 52 (arbitration).

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.