



Meeting note

Project name	Expansion of Luton Airport
File reference	TR020001
Status	Final
Author	The Planning Inspectorate
Date	1 November 2022
Meeting with	Luton Rising
Venue	Microsoft Teams meeting
Meeting objectives	Project Update meeting and discussion following review of draft documents
Circulation	All attendees

Summary of key points discussed, and advice given

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

Programme update

Luton Rising (the Applicant) indicated that its Development Consent Order (DCO) application is anticipated for submission in Q1 2023 and is likely to be early February 2023.

Discussion on advice received from the Inspectorate on the draft DCO application documents

The Applicant confirmed that the comments received on 18 October 2022 from the Inspectorate on its submitted draft documents (attached), were still under consideration and that the same set of documents had also been reviewed and commented on by host authorities and that technical stakeholder engagement was ongoing, including sharing relevant updated draft application material, where appropriate.

The Applicant considered that there were no significant issues raised with the submitted draft documents based on the feedback from the Inspectorate. The Inspectorate broadly agreed with this statement based on what was submitted as part of the draft document review however highlighted that this was without prejudice to the review of the full suite of application documents which will be carried out at the acceptance stage once received.

The Applicant presented its approach to phasing and that it is seeking to retain flexibility in how the Proposed Development is delivered post-consent to address the project timeline of approximately 20 years and the uncertainty inherent in forecasting the pace of future demand. The Applicant stated that the Proposed Development has adopted typical tools of flexibility (e.g., reasonable worst case assessment) as well as developing innovative approaches such as with Green Controlled Growth (GCG), which was developed to provide greater certainty around environmental outcomes.



The Applicant highlighted that the DCO would require relevant local planning authority approval of detailed design and development for each part of the Proposed Development.

The Applicant presented a sample of its Work Plans, depicting the overlapping works differentiated by colour/tonne. The Applicant confirmed that Scheme Layout Plans will be submitted with the application which would represent indicative layouts of the Proposed Development at different times in its development. In response to the Inspectorate's comment regarding the Code of Construction Practice (CoCP), the Applicant confirmed its intention is that the CoCP would become 'final' at the end of the Examination.

The Applicant raised an issue regarding detailed information to be included in the Book of Reference, to which the Inspectorate referred to the published information in [Advice Note 6](#).

The Applicant explained their approach with regard to compulsory acquisition and temporary possession and how they consider the standard 5 year period, which is typically used on other NSIP schemes, would not be appropriate for this type and scale of project and so are looking to use a 10-year period approach which they consider will better meet the needs of the project. The Inspectorate advised the Applicant to clearly justify this in its Explanatory Memorandum and Statement of Reasons. The Applicant acknowledged that this approach is unusual and that it will have to explain and justify why such an approach is appropriate in this instance.

Regarding the Inspectorate's comment on how the GCG approach is secured, the Applicant responded that its intention is to provide certainty with regard to GCG, which is why GCG and the ESG are included into the draft DCO. The Applicant confirmed that it was aware of potential issues in amending GCG where it is included in the draft DCO. The Applicant stated that it is considering drafting potentially two separate GCG-related documents to accompany the DCO (an explanatory one and a more detailed one with various limit values to make it easier to update GCG in the future if required).

In response to the Inspectorate's comments in regard to air quality, the Applicant highlighted the difficulties of identifying the airport's contribution to any breach of air quality limits. Regarding the Inspectorate's comment on quota count with reference to the noise impact, the Applicant highlighted that it is not proposed to use a quota count metric as a limit in GCG, but it can be used as a monitoring, performance indicator and forward planning tool.

The Applicant advised it is in ongoing discussions as appropriate, with the Department for Transport (DfT) in relation to issues such as the approach to GCG.

Other Matters

The Inspectorate enquired whether any unexpected additional issues had surfaced recently from the engagement with stakeholders. The Applicant stated that discussions were ongoing with a number of bodies such as the Environment Agency, Cadent Gas, local authorities etc; and that Statements of Common Ground (SoCG) with parties are on track and will also help identify any areas of uncommon ground. The Applicant was aware that additional SoCGs may potentially be required by the Inspectorate during Examination.

The Applicant briefly noted the live called-in inquiry application (21/00031/VARCON) concerning Luton Airport, and that whilst they do not consider this will impact on any timings



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for the proposed DCO application, the Applicant confirmed that it is, nevertheless, closely monitoring this inquiry.

Next steps

The Inspectorate and the Applicant agreed that given the timescale between now and submission, two short update meetings would be scheduled for December this year and early next year, before the submission of the application in February 2023.



LUTON AIRPORT – TR020001

Section 51 advice regarding draft application documents submitted by LONDON LUTON AIRPORT LIMITED

On 5 September 2022, London Luton Airport Limited submitted the following draft documents for review by the Planning Inspectorate as part of its Pre-application Service¹:

1. Draft Development Consent Order
2. Draft Explanatory Memorandum
3. Draft Environmental Statement Chapter 4 – Proposed Development
4. Draft Environmental Statement Chapter 5 – Approach to Assessment
5. Draft Green Controlled Growth Framework document
6. Draft Consultation Report
7. Draft template Book of Reference
8. Draft Statement of Reasons

The advice recorded in the table comprising this document relates solely to matters raised upon the Planning Inspectorate's review of the draft application documents, and not the merits of the proposal. The advice is limited by the time available for consideration and is raised without prejudice to the acceptance or otherwise of the eventual application.

¹ See <https://infrastructure.planninginspectorate.gov.uk/application-process/pre-application-service-for-applicants/>



Draft Development Consent Order		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
1.	Preamble	The preamble is drafted with reference only to the single appointed person procedure. The applicant should be aware that if a Panel is appointed then different drafting will be needed.
2.	Art 2	<p>Interpretation</p> <p>(1)...</p> <p>The definition of “commence” is more complex than typical definitions in equivalent made Orders. It contains nested exceptions from commencement (...<i>‘other than’</i>), which in turn contain nested sub-exceptions (...<i>‘excluding’</i> and ...<i>‘including’</i> particular works, surveys etc.). The effect of the drafting is to make the understanding of commencement less certain (and more amenable to possible dispute or challenge and so a greater source of project risk) than it should be. It is preferable to draft the DCO with as simple a definition of commencement as possible and then to qualify this with subsequent interpretation and substantive provisions which make clear that defined actions may occur before commencement in defined circumstances, such as landfill remediation works or archaeological surveys.</p> <p>There is no definition of “limits of works” (see Art 6) or of ‘limits of deviation’ and it would assist interpretation for this concept to be defined. The more commonly used drafting term in made Orders is ‘limits of deviation’ (as these limits can relate to both development and use, whereas ‘limits of works’ may be interpreted as limited to the construction stage alone). Made Orders will often define the term ‘limits of deviation’ very simply as (for example) ‘the limits for the scheduled works as shown on the works plans’.</p> <p>The definition of “maintain” is very broad, in that it includes <i>‘to inspect, repair, adjust, alter, remove, refurbish, replace, improve or reconstruct...’</i> . It is subject to the important provision that <i>‘such works do not give rise to any materially new or materially different environmental effects from those identified in the environmental statement’</i>. Nevertheless, is there an argument that the scope of the definition would be more precise and certain if it provided that “maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace (but only in relation to [specific defined works where this scope is</p>



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		<p>operationally necessary])? The objective of such a revision would be to provide flexibility where this is operationally necessary and reduce the scope for uncertainty and dispute in relation to circumstances where more extensive works do not need to fall within this definition.</p> <p>(2) Should this provision include the following: '<i>References in this Order to rights over land include references to rights to do <u>or restrain</u>...</i>' ? The remainder of the drafting references the imposition of restrictive covenants and in instances where such covenants are imposed, the rights over land sought typically do include rights to both do (positive rights) and to restrain (negative or preventative rights).</p> <p>(3) It can assist certainty in the interpretation of a made Order for there to be specific reservations from a general provision that all distances, directions and lengths are approximate. For example, some made Orders will expressly reserve certain of the Parameters of authorised development (see Sch 2, Part 2 para 6) from the general operation of Art 2(3) where to do so adds certainty and assists in the clear and consistent administration of the Order provisions. This could also usefully provide that 'areas' described in square metres are also approximate (and remove the need for Art 2(5)).</p> <p>(5) If Art 2(3) is amended to provide that 'areas' are approximate then Art 2(5) becomes superfluous. See also Requirement 1 (R1).</p>
3.	Art 3	<p>Development consent etc. granted by the Order</p> <p>(1) Some made Orders specifically provide that the authorised development and or specific works are authorised within the Order limits. In this dDCO that could be achieved by reference to development consent being subject to Art 6 (Limits of works) (but see below).</p> <p>(2) This provides that '<i>[a]ny enactment applying to land within, adjoining or sharing a common boundary with the Order limits has effect subject to the provisions of this Order</i>'. It appears to be in effect a provision relating to the application and modification of legislative provisions.</p>



Draft Development Consent Order		
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		<p>The power to amend legislative enactments in a DCO is a profound power and is not to be used lightly. It places the ExA and the SoS into the shoes of the legislature. It derives from and is limited by s120 and Sch 5 of PA2008.</p> <p>PA2008 s102(5) provides that: <i>An order granting development consent may—</i></p> <p><i>(a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;</i></p> <p><i>(b) make such amendments, repeals or revocations of statutory provisions of local application as appear to the Secretary of State to be necessary or expedient in consequence of a provision of the order or in connection with the order;</i></p> <p><i>(c) include any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to any other provision of the order;</i></p> <p><i>(d) include incidental, consequential, supplementary, transitional or transitory provisions and savings.</i></p> <p>Drafting in typical made Orders demonstrates that it has addressed these provisions of the Act by including an expressly drafted Article (in this case see Art 42) that empowers and individually itemises the application and modification of legislative provisions, either directly or with reference to a schedule. Such an Article specifies the enactments and provisions that the Order is intended to modify and sets out how these are to be amended. It demonstrates how the proposed amendments address the s120(5)(a) ‘<i>matters</i>’ for which provision may be made (see also Sch 5), and enables the ExA and so the SoS if necessary to determine whether the changes are ‘<i>necessary or expedient...</i>’ (s120(5)(b) and/ or (c)).</p> <p>The power to apply and modify legislative provisions in a DCO is not a general one. It does not appear to be <i>intra vires</i> a DCO to vary all or any un-specified enactments by a general provision such as that employed here, that ‘<i>[a]ny enactment applying to land within, adjoining or sharing a common boundary with the Order</i></p>



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		<p><i>limits has effect subject to the provisions of this Order...</i> Rather, if the DCO is intended to amend enactments, then it is necessary to undertake this in Art 42 which should identify the specific enactments that are to be amended and how the amendment takes effect.</p> <p>It is recommended that Art 3(2) is removed and that Art 42 is reviewed to ensure that it does refer to all enactments applying to land within, adjoining or sharing a common boundary with the Order limits that require to be amended to give effect to the Order and specifies the amendments to be made.</p>
4.	Art 6	<p>Limits of Works</p> <p>This Art is expressed as relating to Limits of works (but this is not a term defined in Art 2). The more typically used drafting in made Orders relates to 'limits of deviation' on the basis that the relevant limits relate to both development (works) and use (the operational stage). It may help clarify the intent and the effect of the Order in operation if the term 'limits of deviation is used'. (See also Art 2.)</p> <p>In relation to the as yet unspecified limits of deviation vertically, the limits must be set with reference to (and securing) the worst case extent of vertical deviation assessed in the Environmental Statement.</p>
5.	PART 3	<p>Street works generally</p> <p>Part 3 in general and Arts 10 and 11 specifically or Art 30 (Rights under or over streets) do not provide broad powers for the undertaker to conduct subsurface works related to and made necessary by permanent or temporary alterations to the layout etc. of streets or the construction and maintenance of new, altered or diverted streets. As street works typically include drainage and in-street infrastructure works, it would be prudent to empower such as the following. To:</p> <p>(a) break up or open the street or any sewer, drain, pipe or tunnel under it;</p> <p>(b) tunnel or bore under the street;</p>



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		<p>(c) place, replace or move apparatus under the street; (d) maintain apparatus under the street; and (e) undertake any works required for or incidental to (a) to (d).</p> <p>Is there any need for a schedule or schedules identifying the streets subject to the power to alter (Art 10) or to temporary stopping up (Art 12)?</p> <p>The relevant highway authority</p> <p>“The relevant highway authority” is a term defined in Art 2. On this basis, drafting such as in Art 11 referring to ‘<i>the relevant highway authority in whose area the street lies</i>’ is superfluous and should refer only to the relevant highway authority.</p>
6.	Art 9	<p>Application of the New Roads and Street Works Act 1991</p> <p>The New Roads and Street Works Act 1991 is defined in Art 2 as “the 1991 Act”. This Article should therefore relate to:</p> <p>Application of the 1991 Act</p>
7.	Art 12	<p>Temporary stopping up and restriction of use of streets</p> <p>(1) ‘<i>The undertaker, during and for the purposes of carrying out the authorised development, <u>may temporarily stop up, alter, divert or restrict the use of any street</u>...</i>’. As drafted, this power applies without limit. Should this article refer to a plan or plans, or a schedule defining the streets to be temporarily stopped up or restricted in use?</p>



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8.	Art 20	<p>Felling or lopping of trees and removal of hedgerows</p> <p>It is common for made Orders including an equivalent power to draft with reference to a ‘Hedgerows plan’ or equivalent, or to a schedule identifying and locating hedgerows empowered to be removed.</p> <p>Are there no trees subject to Tree Protection Orders (TPOs) or need to authorise works in respect of such?</p>
9.	Art 24	<p>Time limit for exercise of authority to acquire land compulsorily</p> <p>Ten years is in principle a long period. Made Orders typically provide for a shorter period (eg 7 years for offshore wind farms accepted to be highly complex in delivery, and 5 years for a smaller linear scheme such as a highway). The effect of the ten year period in relation to temporary possession (TP) may raise questions in relation to the degree to which land should be subject to TP or whether, because of the in effect permanent nature of some possible impacts of TP over such a long period, land should be subject to compulsory acquisition (CA) or exceptional hardship procedures should be available to mitigate the effects of TP (eg by buying out unexpired terms of leaseholds or purchasing businesses). See for example the Exceptional Hardship Procedure included in the Thames Tideway Tunnel application (ExA RR at page 24 paras from 1.71). See also Art 27.</p>
10.	Art 25	<p>Compulsory acquisition of rights and imposition of restrictive covenants</p> <p>(6) For the avoidance of doubt, does it need to be provided that the undertaker or primary beneficiary of the Order remains liable for compensation payable in circumstances where acquisition is delegated to a statutory undertaker? This point is raised because in the alternative (where acquisition empowered under the Order will proceed and compensation will be paid by a statutory undertaker, the financial readiness of the statutory undertaker needs to be addressed in the Funding Statement and may also need to be secured.</p>
11.	Arts 27 & 28	<p>Modification of the 1965 Act, application of the 1981 Act and modification of the 2017 Regulations</p>



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		To the extent that these provisions refer to (and amend enactments to include) a ten year period (see Art 24), for reasons set out above, is that period too long, or do additional CA terms or hardship provisions need to apply?
12.	Art 41	<p>Environmental Scrutiny Group</p> <p>Is it necessary for the Environmental Scrutiny Group (ESG) to be empowered under the Order or are there any other statutory powers applicable to aviation and airports that could authorise and regulate its establishment? There is no concern against the adoption of specific powers to establish it, but as a matter of general principle and good practice in statutory drafting one should not legislate to re-create powers or functions if there is general legislation that already provides an adequate enabling framework.</p> <p>There is an argument that this Article should authorise the establishment of an ESG, but then refer to a Schedule in which details of its constitution and operation would then be set out. This drafting is of a very detailed and specific nature, when in general terms, Orders seek to confine the drafting of Articles to the expression of general powers, leaving detail such as this to be resolved in a Schedule if required. As a further alternative, this article could empower the establishment of an ESG for specified functions and leave the constitutionality and approval of the ESG for approval by the SoS or the relevant local planning authority, subject to an outline ESG framework document if required, which could be examined and become a certified document. Either of these approaches would retain the purpose and function of the ESG whilst substantially simplifying the current drafting.</p> <p>The relationship between the role and functions of the ESG and the proposed Green Controlled Growth (GCG) Framework document are noted below and it is considered that these do need to be clarified on the face of the dDCO.</p>
13.	Art 42	<p>Disapplication of legislative provisions and amendment of local legislation</p> <p>See also Art 3</p>



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		<p>(3) It is entirely in order for the Order to disapply specific local enactments and bye-laws, but the empty bracketed provisions here must include specific content by the time the application is submitted, to enable interested parties to address the disapplications that are proposed and the ExA to examine those proposals within the framework set by PA2008 s120.</p> <p>(4) Despite several readings, this paragraph is hard to interpret, and its intention remains unclear. If (as it appears) it purports to provide a general (i.e. non-specific) disapplication of any and all enactments that create an offence relevant to implementation of the Order, requires a remedial action or any other action that would interfere with an authorised work under the Order, then it is drafted in terms that are too general. For reasons set out in the commentary of Art 3, if an enactment is sought to be disapplied, then it needs to be disapplied in specific terms.</p>
14.	Art 43	<p>Application of the 1990 Act</p> <p>(2) Attention is drawn to the effect of PA2008 s33(1) (a) which provides that to the extent that development consent is required for development then planning permission is not required to be obtained or given for it. It is important that the applicant is clear that the Order must provide authorisation for all development sought that meets the relevant thresholds under PA2008 s23 (Airports). Once development is NSIP development then arguably it is no longer subject to the provisions or enforcement of any TCPA planning permissions the effect of which are subsumed within the authorised development. If any such conditions are sought to be retained for any period after commencement under the Order, it appears necessary to make those TCPA planning permission conditions subject to a saving provision in the Order.</p> <p>(3) to (8) It is important that this Order makes clear when an alteration of the airport and/ or an increase in its permitted use that meets the definition of a NSIP in PA2008 s23 commences. Whilst it is prudent to specify the effect that such commencement will have for the purposes of the LLAOL planning permissions (or other relevant planning permissions), as above, the best view appears to be that planning permissions subsumed</p>



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		within the authorised development in the Order cease to have effect and so to the extent that any retained effect is appropriate then saving provisions are required to achieve this.
15.	Art 49	<p>Service of notices</p> <p>There is a substantial body of administrative detail in this Article on which many made Orders are silent. Is it strictly necessary? If it is, then is there not an argument that it might be used to make digital the preferred means of service and communication? Making digital into a secondary means of service only to employed with consent will tend to mean that communication will default to hard copy by post and process timescales will need to address that slower means of service.</p> <p>In Examination the ExA will adopt ‘digital by default’ and the examination timetable will reflect that method and the time efficiencies that it generates. There is an opportunity to adopt the same approach here, making provision that digital service is the default method but that service by post can be used if it is requested in circumstances where a person making the request is unable to access or use digital means of communication.</p>
16.	Art 50	<p>Arbitration</p> <p>The arbitration provision is commendably brief and aligns with best practice in made Orders that an arbitrator is appointed by agreement between the parties, in default of which they are appointed by or on behalf of the Secretary of State.</p> <p>Most recent made Orders do contain an arbitration schedule. It is noted that there is no such schedule here – which does raise a question as to how the process of an arbitration might be governed if one is triggered. A number of recent applicants have proposed overly complex arbitration provisions in a schedule which the SoS has then amended to simplify. If an arbitration schedule is under consideration, the applicant is referred to the ExA Recommendation Reports (in chapters and appendices addressed the dDCOs in each case) and SoS Decision Letters for Thanet Extension, Hornsea Three and East Anglia One North and Two Offshore Wind</p>



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		Farms for discussion and decisions on the necessary scope and appropriate detail to be provided for in arbitration provisions.
17.	Sch 1	<p>The works are generally well and clearly described.</p> <p>There are some issues about the phasing or staging of works that could usefully be considered further in the dDCO, to ensure that the draft Order addresses the applicant’s intentions whilst ensuring appropriate programmatic flexibility. The draft ES Ch4: Project Description states at paragraph 4.7.15 “<i>The new passenger terminal would be ultimately sized to process up to 12 mppa, taking the total airport capacity to 32 mppa. T2 has been designed to allow incremental construction to meet forecast passenger demand, with the initial phase catering for 7 mppa on opening.</i>” And at para 4.7.21 regarding the T2 extension, Work No. 3b(02) is described as “<i>To provide additional passenger capacity, the terminal[T2] would be widened by 45m across its entire length (to the east elevation) in Phase 2b increasing the maximum footprint to 33,385m2.</i>”</p> <p>This implies that the work described as the T2 extension occurs after the initial stage of T2 has been constructed. The T2 construction is shown in construction Phase 2a and T2 extension in construction Phase 2b on the Illustrative Work Locations plans. (It is noted that these are not currently intended to be certified/formally secured plans – perhaps there is a role for them as certified plans secured in the dDCO?)</p> <p>The ES infers a sequence for a number of the other works (also shown on Illustrative Work Locations plans) but other documents (eg the Cover letter suggest the Applicant’s intention for the DCO to authorise expansion of the airport to take place in undefined increments that respond to future demand and accordingly the draft DCO does not prescribe how growth must be delivered, e.g. by regulating the carrying out of particular works by reference to defined phases.</p> <p>Nevertheless, the ES assessment will be considering three construction phases, and see comments below on the ES in relation to how much certainty will be provided that the assessments provide a worst-case. R7 secures the approval of a phasing scheme by the LPA so it is assumed that the phasing of the development would take place in accordance with the ES assessment and that that is appropriately secured.</p>



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		<p>Flowing on from these general considerations in relation to the phasing and staging of works, more detailed consideration has been given to the dDCO drafting in relation to specific works where some form of phasing or staging is inferred.</p> <p>Consideration might be given to the distinction between works that are intended to be temporary, to accommodate or facilitate permanent works, and the permanent works themselves. For example, Work No. 2e might be better described as ‘temporary works to upgrade the existing engine ground run up bay’ which would make its relationship to later (permanent) Work No. 2f, which in turn might usefully be described as ‘permanent works...’ The same consideration might also be given to the temporary versus permanent car park works.</p> <p>Consideration might be given to the description of the Works relating to Terminal 2 (T2). T2 is understood to be a new development authorised by the Order. If that is the case, then the description of some of the T2 works eg Work No. 3b(02) as an ‘extension’ to T2 may introduce unintended uncertainty about the authorisation sought and about delivery sequencing. Is 3b (02) intended only to be constructed if an earlier work is constructed first? If not, it might be better and more flexible to describe Work No. 3b(01) for example as ‘the construction of part of a new airport terminal building (T2 - Part 01)’ and then Work No. 3b(02) might be ‘the construction of part of a new airport terminal building (T2 - Part 02)’ etc... by which it would be made clear that T2 works can take place in parts, but not enabling an unintended interpretation that those parts have to proceed in a particular order, unless that order is intended, necessary and will not need to change.</p> <p>Following Work No. 6e, there is a general list of lettered associated development works. <i>‘In connection with the construction of any of those works, further associated development within the Order limits consisting of...’</i> It is not beyond doubt whether those lettered associated works relate to the authorised development as a whole, or to the land specifically identified on the Works Plan as Work No. 6e. Further, the lettering of these works might be read as duplicating the lettering of parts of Work No. 6e. This list might better be introduced as follows: ‘In connection with the construction of <u>the authorised development</u>, further associated development within the Order limits consisting of...’</p>



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		Some of this final class of further associated development is also very broad in scope and might conflict with the more precise operation of powers taken in the Articles or the provisions of requirements. For example, a general associated development work consisting of (k) the felling of trees and hedgerows needs to take effect subject to Art 20. A general associated development work consisting of (l) ‘establishment of site construction compounds’ etc. raises a spatial dimension. Sometimes the location of construction compounds, haul roads, lighting and parking can affect how eg environmental effects such as noise, dust emissions, light etc affect eg residential or natural environment receptors. If a construction compound can be anywhere in the Order limits then the ES must assess worst case likely significant effects (eg from acoustic, dust or light emissions) that takes that into account. If the ES has assessed effects on receptors on the basis of indicative spatial distributions for such further associated development, then the Order and the Works Plan may need to secure their location with greater specificity than is used here.
18.		<p>Codes, principles and plans generally relevant to requirements</p> <p>It is normal practice for codes, principles documents and plans intended to guide construction operation and final versions of which may be approved or amended by discharge of requirements are submitted with the Application in outline form. A requirement then provides for the submission of the detailed document which must generally accord with the examined outline document. In this dDCO, there is no secured outline for the following plans:</p> <ul style="list-style-type: none"> • R8 Code of Construction Practice (CoCP) (although constituent plans are approved later); • R9 landscape and biodiversity management plan; • R14 cultural heritage management plan; <p>Nor is there a mechanism (akin to that in a number of other requirements) under which the authorised development does not commence until such a plan is submitted to and approved in writing by a relevant discharging body (normally the relevant planning authority). In these instances it remains unclear how the final version of these documents will be approved. A consistent approach needs to be adopted and that of the</p>



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		submission of an outline plan for examination and the subsequent approval of a detailed plan by discharge of a requirement before commencement would be the most typically used method.
19.	Sch 2	<p>Requirement 1 (R1)</p> <p>A number of codes, outline plans and principles relevant to the discharge of requirements are defined here. A majority of made Orders would include such definitions in Art 2 rather than Sch 2. The reason for this drafting is that if the document referred to has any function in the Order more broadly than in just Sch 2, the requirements (eg because it is relevant to say protective provisions, to appeals or to arbitration), then it needs to be defined in Art 2. It is a principle of 'low risk' drafting for the avoidance of errors or omissions that such documents are defined in that article in preference to here, unless the applicant is confident that there is no need to do so.</p>
20.		<p>R2</p> <p>This is novel drafting not encountered in made Orders reviewed to date. It is precautionary but a question remains as to whether it is necessary if the remaining requirements are correctly drafted.</p>
21.		<p>R3</p> <p>This is again novel drafting not encountered in made Orders reviewed to date. It is precautionary, but a question remains as to whether it is necessary. If anticipatory steps that do not require to be authorised development and are not subject to any other statutory controls are undertaken before the Order is made, then it is sufficient that when the relevant requirement is discharged, the discharging authority is made aware of all that has been done to prepare for the discharge decision. If however, the anticipatory steps amount to development that requires to be authorised development under PA2008 (or is subject to planning permission under TCPA 1990 or any other statutory consent regime) and are done before the Order is made, then this provision in an un-made Order cannot endow them with lawfulness or address (for example) the need to discharge R7. NSIP development will be empowered when this Order is made. Commencement can occur when R7 is discharged with reference to the relevant part of the authorised development.</p>



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22.		<p>R4</p> <p>The justification for a ten-year commencement is understood, though this advice is given without prejudice to the power of the appointed ExA to examine related matters, such as detriments arising from this time period in due course. However, if there may be ten years before the authorised development is commenced and then (see Art 24) eg land may be subject to TP for ten years in the construction period, the duration of effect before eg a business use on land subject to TP is unimpeded extends up to 20 years. This additionally suggests a need to examine the approach taken to the mitigation of hardship so caused in the Thames Tideway case.</p>
23.		<p>R6</p> <p>In completing this table, it will be important to consider the worst (normally most extensive) parameter case assessed in the ES and ensure that that is secured.</p>
24.		<p>R8</p> <p>(3) Is there a need to specify that the updated CoCP and plans pursuant to the review process require to be approved by the relevant planning authority?</p>
25.	Sch 2 Part 3	<p>Principles of operational requirements</p> <p>There are matters in this part which regulate the operation of the authorised development in the same sense as a condition to planning permission under TCPA 1990. Such matters are quite properly the subject matter of requirements. There are matters that tend towards the content of an Operational Environmental Management Plan (OEMP), in that they relate to operational actions and procedures (rather than strictly setting parameters or limits to be met or enforced), engage the detailed application of monitoring methods, provide for the operation of the ESG, exceedance management methods, mitigation plans and the like.</p> <p>R22 specifies that Sch 2 Part 3 must be reviewed every 5 years and a report must be prepared which sets out whether any improvements to the operation of it are considered necessary to ensure the efficient and effective</p>



Draft Development Consent Order		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
		<p>operation of authorised development within the limits set in requirements are necessary. It is not specified to whom this report is made. Nor is it determined how Sch 2 Part 3 provisions might then be amended.</p> <p>This tends to indicate that this and linked requirements relate to the monitoring and review of what amounts to an OEMP. There may be an argument that there should be a requirement which provides that an OEMP should be approved by the SoS or the relevant planning authority, implemented as approved, monitored and reviewed on a 5 yearly basis and amended if required using the same approval mechanism. That could be both simpler and clearer than the drafting provided in the dDCO.</p> <p>The Green Controlled Growth (GCG) Framework document reviewed in draft has an opportunity to be formally specified and secured in this group of requirements as the document that provides the OEMP functions for the authorised development in its operational stage. Given the evident importance of the GCG in draft, there is every reason to retain and amplify it to perform this role and then to ensure that its functions in operational management terms are specified and secured here. Considering the importance of the GCG document, the dDCO currently makes only the most limited definitional and procedural references to it. Nor is its relationship with the ESG (see Art 41) well defined. Drafting progress can be made on both fronts, whilst ensuring that operational and constitutional detail that does not need to be specified in the DCO (because it is dynamic and needs to be monitored and amended without a need to amend the Order in due course) is not included in the dDCO.</p>
26.	Sch 2 Part 4	<p>Deemed consent on discharges</p> <p>These requirements deem consent in circumstances where a time limit for discharges is not met and there is a non-determination. Made Orders include other mechanisms, typically a deemed refusal invoking an appeal. An ExA will examine these provisions and will wish to be satisfied that the timescales and outcomes of the deemed consent procedure are fair, reasonable, and proportionate to the importance and prioritisation of the issues for determination.</p>



Draft Development Consent Order		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
		In the interests of drafting simplicity for requirements that take effect as conditions applicable to the authorised development, some made Orders place discharge procedures into a separate schedule.
27.	Sch 2 Part 5	<p>Appeals on discharges</p> <p>Appeal procedures include a 21 day period for the Secretary of State to appoint a person to conduct an appeal and a period of 10 days for the discharging authority and other appeal parties to make primary representations. This is substantially shorter than the equivalent periods in recent made Orders.</p> <p>In the interests of drafting simplicity for requirements that take effect as conditions applicable to the authorised development, some made Orders place appeal procedures into a separate schedule.</p>
28.	R29	<p>Application of Part 8 of the Planning Act 2008</p> <p>Whilst it expressly does not modify Part 8 of PA2008 (Enforcement), it is not clear that this drafting is compatible with the purpose and procedures within that part of the Act.</p> <p>The provision of notice under paragraph (2) does not seem to engage with the procedure for enforcement action under Part 8, under which the relevant planning authority will investigate whether an offence has occurred under s160 or s161 of the Act. In doing so it may elect to seek entry to land with or without a warrant or the provision of specified information. If a prosecution under s160 or s161 results in a conviction then the relevant local authority may serve a notice of unauthorised development (s169) (in effect a remediation notice) and, if the terms of such a notice are not met, may in certain circumstances take direct action to execute works and recover costs (s170). It may not always be possible, expedient or in the public interest for the relevant local authority to pass an immediate and serious breach through the ESG procedure in paragraph (1), or to provide notice under paragraph (2).</p> <p>The effect and benefit of the drafting in this requirement is also unclear as, Part 8 of the Act remaining in force, nothing prevents any person from requesting the relevant local authority to investigate a potential breach of the</p>



Draft Development Consent Order		
Ref No.	Article/ Requirement/ Schedule	Comment/Question
		Order and the relevant local authority is not constrained by this provision from any alternative procedure in the administration of Part 8 of the Act that is not ultra vires the Act. Finally, this understood to be a novel provision that goes beyond the provisions of most made Orders.
29.	Explanatory Note	Address for deposit location is required, along with confirmation in writing that the third party has agreed.

Draft Explanatory Memorandum		
Ref No.	Paragraph/ Section	Comment/Question
30.		This document has been used as a tool in reviewing the dDCO. The detailed review of the dDCO has considered the dEM and in instances where the dDCO appears to diverge from well-established drafting practice and there is not clear reasoning for such in the dEM this is highlighted above.

Draft Environmental Statement Chapter 4 – Proposed Development		
Ref No.	Paragraph/ Section	Comment/Question
31.	General	This chapter cross-references in many places to other supporting ES appendices, documents and plans that contain the detailed information, such as <i>Appendix 4.1: Construction Method Statement and Programme Report</i> . The comments below have been made in the absence of sight of such supporting/related information, for example the detailed construction programme.



Draft Environmental Statement Chapter 4 – Proposed Development		
Ref No.	Paragraph/ Section	Comment/Question
32.	Tables 4.1 and 4.2	Highways – works to M1 Junction 10. Works No.6e(n), (o), and (p) - potential widening works to the M1 J10. The ES does not confirm the area for these potential works, although they are shown on plans. Please ensure that if works to the M1 Junction 10 are identified as being an NSIP this is clearly identified in the draft DCO and ES.
33.	Paragraphs 4.5.3 to 4.5.5	Work Type 1 – Sitewide major works to enable development. The ES states Appendix 4.1 describes the site clearance and demolition requirements. It would be useful to also include a description of such works in ES Chapter 4. The Inspectorate also notes that ‘site preparation and site clearance’ is one of a number of activities excluded in the definition of ‘commence’ in the draft DCO (Article 2), thus it would be helpful to understand how extensive these enabling works are.
34.	Paragraph 4.5.11	Work No. 1a – Earthworks – landform platform. This paragraph states that the replacement open space (Work No. 5b(02)) would be in place prior to the main excavation works, both are to be delivered as Phase 1. Noting that both are included in Phase 1, how is the timing of the delivery of the replacement open space prior to the main excavation works secured/ensured? Where the open space is indicated as being in place prior to construction, the Inspectorate recommends the ES clearly state whether it would be operational and/or the stage at which it is completed and mature for the purposes of the assessment. It would be helpful to understand the sequence of events that are likely to occur.
35.	Paragraph 4.5.14	Work No. 1b – Landfill remediation. Piling is mentioned in this paragraph but not the type of piling. Reference is made to ES Chapter 17 and supporting appendices including a Foundation Works Risk Assessment. The Inspectorate recommends that sufficient detailed be included in Chapter 4 about the type, number and methodology for piling to reduce the need to refer out to multiple appendices and supporting documents.
36.	Paragraph 4.5.20	Power and communication. It is unclear what is meant by “...to connect proposed developments.” The Inspectorate recommends this paragraph be clarified – eg does this refer to other proposed/forthcoming developments, parts of the Proposed Development, or existing development at the airport?



Draft Environmental Statement Chapter 4 – Proposed Development		
Ref No.	Paragraph/ Section	Comment/Question
37.	Paragraph 4.5.29	Drainage. The Inspectorate encourages the Applicant to seek agreement with Thames Water with regards to the Phase 1 drainage prior to DCO submission, where possible and to reduce the amount of uncertainty within the ES should options be promoted. Where this has not been possible, the ES should clearly describe the different options/solutions proposed and assess the likely significant effects.
38.	Various including paragraph 4.7.24, 4.7.27, 4.8.14	The Inspectorate notes a number of places where a Work No is stated to be “anticipated in Phase 2a”. What sensitivity analysis been done to ensure the assessment remains within the parameters of the Rochdale Envelope approach?
39.	Paragraphs 4.7.26 to 4.7.29	Work No. 3D – bus and coach station. The description of the bus and coach station does not contain information on the number of coach/bus bays. It is recommended this be included.
40.	Paragraph 4.7.50	Work No. 3h – T2 support facilities (Energy Centre). An Energy Centre is mentioned with limited details of its nature/technology or operation. Further detail should be provided, including confirmation as to whether this would include an emissions stack(s) (for example). Should stack(s) be included, the minimum and maximum height parameters should be specified.
41.	Paragraph 4.9.29	Work No. 5c(01) – Landscape restoration. This paragraph is slightly ambiguous in its phraseology (ie “... <i>experience changes to land management for biodiversity reasons...</i> ”) and it is not easy to understand the extent of the works required to the 3 hectares of woodland, including ancient woodland. It is recommended further clarity be provided here.
42.	Paragraphs 4.10.3 to 4.10.19	Work No. 6a – New road providing access to the east of the airport. Paragraph 4.10.3 states the three sub-works would be delivered over the three assessment phases. The Inspectorate recommends stating in the description of each sub-works (ie Work No 6a(01), 6a(02), and 6a(03)) the phase in which the works would be



Draft Environmental Statement Chapter 4 – Proposed Development		
Ref No.	Paragraph/ Section	Comment/Question
		undertaken. Additionally, the length of new dual carriageway in Works No 6a(02) should be stated, where possible.
43.	Glossary	The project description uses many abbreviations and industry-specific terms. The glossary mainly focusses on abbreviations and some terms are not included in the glossary but are described in footnotes to the text. it would be helpful to expand the glossary to provide further explanation of terms used in the chapter.

Draft Environmental Statement Chapter 5 – Approach to Assessment		
Ref No.	Paragraph/ Section	Comment/Question
44.	General	Rochdale Envelope approach. Chapter 4 and Chapter 5 both reference the use of a parameter based approach to the assessment. It is noted that the Project Description (Chapter 4) often refers to dimensions as ‘approximate/approximately’, it is therefore not clear whether the stated parameters have been assumed to be the worst-case scenario. The parameters in the draft DCO (which are not yet populated) should match those considered in the ES.
45.	Paragraph 5.2.7	Scoping. This paragraph confirms that “... <i>some specific methods employed in the EIA have changed since the Scoping Opinion was published.</i> ” It would be helpful to provide some examples of methods that have changed here and/or refer to where in the ES this is explained further, such as in the aspect chapters.
46.	Table 5.1	Topics scoped in/out table. It would be helpful to clarify whether this table is the scope of the ES following receipt of the scoping opinion and whether/how it differs from the list of matters scoped in/out at the scoping stage.



Draft Environmental Statement Chapter 5 – Approach to Assessment		
Ref No.	Paragraph/Section	Comment/Question
47.	Paragraph 5.3.5	Temporal scope. This paragraph states that the proposed construction programme is further described in ES Chapter 4; however, Chapter 4 predominantly references Appendix 4.1 as the construction programme. It is recommended that this paragraph also refer to the detail contained in Appendix 4.1.
48.	Paragraph 5.4.23	Future baseline. Reference is made here to future highway interventions proposed in the East Luton Project and National Highways future investment strategy. What is the likelihood of these projects coming forward and at what point are they considered within the cumulative effects assessment?
49.	Table 5.2	Developments forming part of the future baseline. Noting that a number of these developments were granted permission several years ago, it would be helpful to identify whether these developments are not yet implemented or under construction, and the likely timescales for completion of construction, where known.
50.	Table 5.4	Sensitivity tests. It is recommended the ES make clear if it is relying on new technology (such as next generation aircraft) in the assessment of likely significant effects.
51.	Table 5.5	General guide for the assessment of receptor value and sensitivity. There is little distinction between a ‘high’ and ‘medium’ level receptor value. For example, both potentially relate to a nationally designated site. This could be further clarified.
52.	Section 5.5	In-combination and cumulative effects. The Inspectorate notes the use of the term in-combination effects to describe inter-relationships within the project. To avoid any confusion with the meaning of in-combination in respect of the Habitats Regulations, you may wish to consider using a term such as inter-related effects or intra-project effects (or similar) in the ES.
53.	Paragraph 5.7.6	Transboundary. To note that the duty of the Secretary of State (SoS) under Regulation 32 is continuous throughout all stages of the DCO application, from pre-application through to the SoS’ decision on whether or not to grant development consent.



Draft Environmental Statement Chapter 5 – Approach to Assessment		
Ref No.	Paragraph/Section	Comment/Question
54.	Paragraphs 5.8.6 and 5.8.8	Statutory Consultation. It may also be useful to include a summary of feedback received during these statutory consultations, which has informed the preparation of the ES, within individual aspect chapters of this ES to aid understanding of how matters raised have been addressed.
Draft Green Controlled Growth (GCG) Framework document		
Ref No.	Paragraph/Section	Comment/Question
55.	General and dDCO	<p>Schedule 2 Part 3 of the dDCO seeks to specify a detailed framework for the operational management of the proposed development. The current dDCO drafting acknowledges that the detailed provisions of Sch 2 Part 3 will need to be reviewed and amended, but having written those processes into draft secondary legislation, it does not engage with the legal/technical question of how the monitoring and adaptation approval process will occur, if that material is retained in the dDCO.</p> <p>There is an interesting opportunity to substantially simplify and reduce the content of Sch 2 Part 3 of the dDCO to perhaps just a single requirement, specifying in terms that there must be a GCG Framework document, and setting out what that document must contain, how and by whom that document is approved, when and how monitoring occurs, and how the operational management elements of the framework are then improved and approved moving forward, without having to amend what might then be a made DCO. That requirement could also regulate the relationship between the framework and the work of the ESG.</p>
56.	General	The text uses various terms such as net zero, carbon neutral and climate resilient that may be open to interpretation. It would be helpful to include such terms in a glossary. Reference is also made to CORSIA – it would be helpful to have an overview of CORSIA and its implications for the airport expansion proposal within the application material.



Draft Green Controlled Growth (GCG) Framework document		
Ref No.	Paragraph/ Section	Comment/Question
57.	General	It is not possible to search on paragraph numbers eg you can search section 2.2 but typing 2.2.16 does not bring up any results. This will make navigating and using the documents much slower, is there any way to amend the numbering to allow paragraph searches?
58.	Paragraph 1.3.3	This paragraph contains first mention of ESG; however, it is not referenced in full until paragraph 1.3.4. Indeed, Environmental Scrutiny Group and ESG are used interchangeably in the document. It is recommended Environmental Scrutiny Group be used for first occurrence in the document, which can be abbreviated thereafter.
59.	Figure 2.3	Monitoring reports will be annual. If an issue occurs at the start of a monitoring period, there will be almost 12 months until the issue is escalated to ESG and then a period for rectification. What assurance does the GCG provide that issues would be addressed in a timely fashion?
60.	Paragraph 2.2.16	References to “the airport operator will use best endeavours to not increase any future declared airport capacity (being the runway capacity) from the existing capacity declaration” suggest a weak commitment and lack of control of growth through the framework.
61.	Paragraph 2.2.23	Proportional contribution to mitigation – whilst it is acknowledged that it may not be appropriate for the airport to pay the whole cost of fixing an environmental issue that it only makes a proportionately small contribution to, how would the airport propose to deal with the issue of the airport activity exceeding a tipping point from okay to poor environmental performance (the straw that breaks the camel’s back scenario?) eg. air quality is just below a threshold but with the airport expansion it is just over a threshold?
62.	Paragraph 2.2.28	Right of appeal to the Secretary of State. Has the Applicant discussed this with DfT prior to application?
63.	Paragraph 2.4.9	Independent chair – “required to have a professional background in the aviation industry”. Arguably this is not truly independent – should the criteria be related to ‘sufficient experience in aviation field’?



Draft Green Controlled Growth (GCG) Framework document		
Ref No.	Paragraph/Section	Comment/Question
64.	Paragraph 2.5.4	The GCG framework should explain the implication of planes having a QC of 0. ie that over time more planes may not be accounted for by the quota count but would still have a measurable noise impact, highlighting the importance of a movement cap as well.
65.	Paragraph 2.6.5-2.6.9	Enforcement – the duration of time that may elapse between identifying an issue and resolving it is unclear from the current wording and places the onus on the LPA to enforce an issue, rather than on the Applicant to control a situation. This provides limited comfort that the GCG framework will actually address issues identified and in a timely manner.
66.	Paragraph 3.2.12	Specific land vs total area of contour. In the absence of a specified area of land, how would provisions relating to noise insulation be identified and secured for specific properties?
67.	Paragraph 3.3.21	It is unclear why traffic monitoring would only be undertaken where there is an exceedance, whereas previous paragraph states that ANPR technology is available? Is this traffic monitoring on the wider road network to identify the proportional contribution?
68.	Paragraphs 3.4.12 to 3.4.14	It is unclear what is meant by net/gross emissions in the context of scope of emissions – is any additional description/explanation available?
69.	Appendix 5.1 and 5.2 - Paragraph 10.1(b)	“(b) The need to ensure the safe and efficient commercial operation of the airport” – the Inspectorate questions whether it is really for the group/technical panels to ensure the efficient commercial operation rather than consider the environmental implications?
70.	Appendix 5.2 – Paragraph 3.1	The Inspectorate queries whether the Applicant proposes to include Luton Borough Council as a required attendee?



Draft Green Controlled Growth (GCG) Framework document		
Ref No.	Paragraph/ Section	Comment/Question
71.	Appendix 5.2 – Sections 9, 12 and 13	Sections 12 (Level 2 Plans) and 13 (Mitigation Plans) that describe procedure state that both plans require 'recommendations' to be received from the Technical Group; Section 9 (functions) implies the Technical Group only 'advise' on these plans. The statement in Sections 12 and 13 to require 'recommendations' implies a stronger protocol than 'advise', should Figure 1, the Table at paragraph 9.7 and Section 9 be amended to state 'advise and provide recommendations' (or similar)?

Draft Consultation Report		
Ref No.	Paragraph/ Section	Comment/Question
72.		Information provided appears to be acceptable, n.b. no Appendix A-N available.

Draft template Book of Reference		
Ref No.	Paragraph/ Section	Comment/Question
73.	General	The BoR is presented with a well-drafted introductory section, from which it appears that it has been structured in the manner that is specified in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP). No comment is made on the specific drafting of the Parts of the BoR which remain empty.
74.	Introduction 2.1.8	Whilst it should not be incorporated into the BoR (which should confine itself to setting out the classes of information specified in the APFP), an ExA is likely to be assisted by a separate schedule and plan recording



Draft template Book of Reference		
Ref No.	Paragraph/ Section	Comment/Question
		land in respect of which no interests, rights or possession are sought because the applicant/ prospective undertaker already has sufficient interests to enable the delivery of the proposed development.

Draft Statement of Reasons		
Ref No.	Paragraph/ Section	Comment/Question
75.	General	The draft appears to be well considered as far as it goes. There are significant elements of content remaining under consideration or absent from the draft that restrain detailed evaluation.
76.	5.2	Please refer to the dDCO commentary for observations of the Compulsory Acquisition and Temporary Possession (CA & TP) powers.
77.	9	The justification for CA powers appears to be generally sound and the application of the tests is clearly recorded.
78.	9.3 and 10	A clear approach to the retention of CA powers in circumstances where progress towards a voluntary agreement is being made is set out. It is consistent with the approach taken in similar previous cases.
79.	12	Whilst the structure is clear and helpful, the absence of site/ issue specific detail in relation to special considerations (Special Category land, Crown land and Statutory Undertakers land) and Human Rights and Equalities Acts compliance means that meaningful comment cannot be provided.
80.	Appendix A	The absence of site/ issue specific detail combined with the absence of completed tables in the BoR mean that no comment can be provided.



Draft Plans		
Ref No.	Paragraph/Section	Comment/Question
81.	Works Plans	<p>The Works No for offsite highways (ie Work No 6e) are not correctly numbered on the Works Plans eg widening of M1 J10 appears on Works Plans as Work No 6r (01) to (03) but this is on the dDCO and in the ES Ch4 as Work No 6e(n) to (p). Work No. 6c (03) & 6f-6t are shown on the Works Plans but are not listed in the dDCO.</p> <p>Unclear on the use of different coloured hatched shading.</p>
82.	LLADCO-3C-CAP-WHS-WRK-DR-AR-0010	<p>The 'Site wide works to enable development' is shown in the Works Plan key as shaded grey with hatching; however, some areas of what appears to be the 'Site wide works to enable development' (ie Works No 1a) is shown in grey with no hatching (which would indicate highways works on the key, but that is likely to be incorrect).</p>
83.	Figure 4.1 Illustrative Work Locations – Assessment Phase 1	<p>The extent of 'Site wide works to enable development' as shown on the 'Indicative Work Locations' plan (in particular 'Assessment Phase 1') does not correspond to the areas identified on the Works Plan for this type of works, thus also indicating the full extent of the 'Site wide works to enable development' is not shown/hatched correctly on the Works Plans.</p>

General

1. Where references are provided to other draft application documents it would be beneficial to provide the full title thereof inclusive of document reference number. Should further draft documents be provided for review, the Applicant may wish to consider providing a full list of known application documents (for purpose of signposting) as well as their respective reference number.
2. [\[MHCLG\] Application form guidance](#), paragraph 3, states: “*The application must be of a standard which the Secretary of State considers satisfactory: Section 37(3) of the Planning Act requires the application to specify the development to which it relates, be*



made in the prescribed form, be accompanied by the consultation report, and be accompanied by documents and information of a prescribed description. The Applications Regulations set out the prescribed form at Schedule 2, and prescribed documents and information at regulations 5 and 6.”