

**Written Submission encapsulating Oral Submission made by Dr. R. John Pritchard at ISH8 concerning wording in Proposed Alterations to the Draft Development Consent Order**

1. At Issue Specific Hearing 8 held on 7 June 2019 at the Lawrence Suite in Discovery Park, Agenda Item 7 considered Proposed New Provisions by the Examining Authority in its First Draft DCO.
2. The third suggested New Provision “(c)” was to add a new Requirement under Noise mitigation: (9(a)): “No part of the authorised development **must** be commenced until measures set out in sections 2, 3, 4 and 5 of the Noise Mitigation Plan have been implemented.” [my emphasis]
3. The ExA noted in its Agenda paper for ISH8 that “in its Comments on the Ex’s dDCO issued on 10 May 2019 [REP7-002] the Applicant states that it is content with this amendment.
4. I believe that the effect of that wording is in effect profoundly different to what is clearly intended.
5. I suggest that the wording of the highlighted passage should be changed to read “No part of the authorised develop **may** commence until measures set out in sections 2, 3, 4 and 5 of the Noise Mitigation Plan have been implemented.” [my emphasis]
6. Absent such a change to the proposed wording, the text proposed by the Examining Authority would prohibit any compulsion to commence such works prior to the implementation of the relevant sections of the Noise Mitigation Plan but would nevertheless permit those works to be done if so desired or effected by the Applicant, the Applicant’s agent or any successor in time.
7. Although the fourth suggested New Provision “d”, re. Requirement 13 – Surface and foul water drainage, is not open to any similar difficulty, for the sake of consistency I would suggest that the wording of new sub-paragraph clause (3) should be amended to read: “No part of the authorised development **may commence** until the construction of the entire surface and foul water drainage system is completed.” [my emphasis]
8. No change is proposed in relation to new sub-paragraph clause (4).
9. As a general point, I suggest that if a provision is **required** to be done, the word “must” is entirely appropriate. If it is a negative provision and what is wanted is to **prevent** something, then using the word “may” rather than “must” will always prevent any contrary interpretation of what is intended to be a prohibited act.

Dr. R. John Pritchard