



# Gatwick Airport Northern Runway Project

The Applicant's Response to Actions from Issue Specific  
Hearing 2: Control Documents / DCO

**Book 10**

VERSION: 1.0

DATE: MARCH 2024

Application Document Ref: 10.9.3

PINS Reference Number: TR020005

## Table of Contents

1	Introduction	1
2	Action Point 1	3
3	Action Point 2	4
4	Action Point 3	5
5	Action Point 4	7
6	Action Point 5	7
7	Action Point 6	8
8	Action Point 6.1	9
9	Action Point 7	10
10	Action Point 8	11
11	Action Point 9	13
12	Action Point 10	16
13	Action Point 11	19
14	Action Point 12	19

## 1 Introduction

1.1.1 This document provides the Applicant's response to the actions arising from Issue Specific Hearing (ISH) 2: Control Documents / DCO. The actions relevant to the Applicant are as follows:

<b>Action No.</b>	<b>Action</b>	<b>Deadline</b>
1	To clarify the extent to which Development Consent Order (DCO) controls would apply to non-commercial air traffic movements (ATM).	Deadline 1
2	To confirm the number of night flight dispensations for 2023 summer season, the procedure followed, the Department for Transport reporting requirements and the supporting details including the numbers allowed/ refused and the reasoning.	Deadline 1
3	To submit information on compliance of Work Nos. 2-7 with Civil Aviation Authority controls and whether these sufficiently control the phasing of the development.	Deadline 1
4	To consider whether the use of any of Work Nos. 8-34 should be related to the proposed increase in commercial ATMs or passenger numbers.	Deadline 1
5	To consider the need for a requirement to clarify dependency of hotel development on an increase in commercial ATMs or passenger numbers.	Deadline 1
6	To consider whether the level of design detail in Schedule 1 is sufficient, and consider whether	Deadline 1

	more information can be included in the design principles.	
6.1	To consider whether a schedule of parameters should be included in the DCO to control maximum numbers of and dimensions of structures (applicable to Work Nos. 15, 16, 19, 20 and 26-29)	Deadline 1
7	To consider whether maximum number of car parking spaces for each car park should be specified	Deadline 1
8	To provide clarification regarding what is mitigation works to address adverse effects and what is associated development.	Deadline 1
9	To provide a reference to the submission that shows the extent of operational land or provide such clarification through an additional submission.	Deadline 1
10	To clarify which Work Nos. fall within the description of excepted development not requiring the making of the DCO to secure development consent.	Deadline 1
11	To submit a draft s106 agreement	Deadline 2
12	To consider the provision of a construction stakeholder engagement plan (or equivalent) as a DCO certified document.	Deadline 1

1.1.2 The below sections provide the Applicant's response. For actions which require a more detailed response, a reference to the appropriate document is included.

## 2 Action Point 1

2.1.1 The Examining Authority has asked the Applicant to clarify the extent to which Development Consent Order (DCO) controls would apply to non-commercial air traffic movements (ATM). The following response is provided.

2.1.2 Requirement 19(1) in Schedule 2 to the **Draft Development Consent Order** (Doc Ref. 2.1 v5) (the "**draft DCO**") provides that:

*"From the date of the commencement of dual runway operations, the airport may not be used for more than 386,000 commercial air transport movements per annum."*

2.1.3 Paragraph 1 of Schedule 2 to the draft DCO defines "*commercial air transport movements*" as meaning "*air transport movements with the exception of diverted or emergency flights*".

2.1.4 The draft DCO defines "*emergency flights*" as:

*"air transport movements which do not carry commercial passengers, which include but are not restricted to—*

*(a) flights operated by government or relief organisations for humanitarian reasons;*

*(b) flights operated by the armed forces for military purposes;*

*(c) medical flights; or*

*(d) a particular occasion or series of occasions which are to be disregarded pursuant to a notice published by the Secretary of State under section 78(4) or 78(5)(f) (regulation of noise and vibration from aircraft) of the 1982 Act or set out in guidance published by the Secretary of State in connection with those provisions"*

2.1.5 The Applicant does not consider it appropriate for requirement 19(1) to limit such non-commercial ATMs given their urgent and largely unplanned nature. Including such flights within the ATM cap would mean that, once the airport is operating at or near to the ATM cap, accommodating emergency flights or flights diverted from other airports would risk the Applicant breaching the DCO. Such a situation would hinder the responsible and effective operation of the airport.



### 3 Action Point 2

- 3.1.1 The Examining Authority has asked the Applicant to confirm the number of night flight dispensations for 2023 summer season, the procedure followed, the Department for Transport reporting requirements and the supporting details including the numbers allowed/ refused and the reasoning. The following response is provided.**
- 3.1.2 The Applicant submits a weekly report to the Department for Transport ("DfT") setting out the total number of night flights in the week, the total of the noise quota count used by those flights and a list of flights to which dispensations were applied (if any). Where dispensations are applied, the report lists the flight, the category of dispensation (e.g. 'widespread and prolonged air traffic disruption') as well as a specific reason (e.g. 'air traffic control staffing in LFRR, France').
- 3.1.3 There is no limit on the number of dispensations that may be applied, however there are strict criteria against which the Applicant must assess each request. In the 2023 summer season there were 1,293 dispensations but there were a further 3,723 requests for dispensations which were refused by the Applicant. Flights for which dispensations are refused are captured within the London Gatwick night flight allocation for the relevant airlines.
- 3.1.4 The DfT maintains guidance on night flight dispensations, the latest of which is dated 22 February 2024<sup>1</sup>. This sets out that dispensations may be applied by the Secretary of State (under section 78(5)(f) of the Civil Aviation Act 1982) or by the airport operator (under section 78(4) of that Act). The former covers state matters or flights in the national interest. The latter covers abnormal and/or extraordinary operational circumstances which are outside the control of the airlines or the airport operator. These include in-flight emergencies, widespread and prolonged air traffic disruption (for example due to ATC issues or exceptionally severe weather) and delays as a result of disruption that may lead to hardship and congestion at an airfield or in terminal facilities.
- 3.1.5 There were a particularly high number of dispensations in the 2023 summer season due to the unusual circumstances including widespread airspace restrictions across Europe and the war in Ukraine.

---

<sup>1</sup> Available here: <https://www.gov.uk/government/publications/night-flight-dispensations/night-flight-dispensations>

## 4 Action Point 3

**4.1.1 The Examining Authority has asked the Applicant to submit information on compliance of Work Nos. 2-7 with Civil Aviation Authority controls and whether these sufficiently control the phasing of the development. The following response is provided.**

4.1.2 Work Nos. 2 – 7 are the airfield works other than the repositioning of the northern runway (which is Work No. 1). These include works to the Runway Access Track, aircraft stands, taxiways, aircraft holding areas, and the new Pier 7.

4.1.3 The Relevant Representation from the Civil Aviation Authority ("**CAA**") [**REP-081**] explains the powers and responsibilities of the CAA. In relation to airfield infrastructure, the Representation explains:

*"2.6 GAL, as the operator of a CAA certified aerodrome, is required by UK Regulation (EU) 139/2014 to seek prior approval from the CAA of impending changes affecting its infrastructure or management system. This requires a formal application to the CAA. The CAA's guidance document CAP 791 sets out the process to be followed and there is accompanying acceptable means of compliance and guidance material in this regard.*

*2.7 The Aerodrome Certificate application will require GAL to submit details of how it intends to satisfy all of the operational requirements laid down in UK Regulation (EU) 139/2014 affected by the Development including, but not limited to, the following:*

- Aerodrome Physical Characteristics*
- Lighting*
- Operational Procedures*
- Rescue and Firefighting*
- Integrated Emergency Planning*
- Air Traffic Services*
- Communications and Navigation Aids*
- Safety Management System*
- Security Management Systems*
- Work in Progress*

- *Managing obstructions*
- *Maintenance*
- *Environmental Management."*

4.1.4 CAP 791 (Procedures for changes to aerodrome infrastructure)<sup>2</sup> itself sets out an exacting three-part process which must be followed before works can commence (after Part 2 of the process) and before a licence to operate the revised aerodrome is granted (after Part 3), with the CAA's approval required at each part. CAP 791 concludes by explaining in relation to Part 3:

*"5.14 Transition into service is a critical phase of the project and can present complex challenges. Careful planning and robust procedures need to be established to ensure that the change is introduced safely and efficiently. This may be demonstrated by undertaking a process of operational readiness, which may include simulations, testing, audits or sample inspections, involving appropriate key stakeholders.*

*5.15 On completion of the change, the aerodrome operator should confirm to the CAA that it meets the agreed design criteria and is fit for purpose.*

*5.16 Where the change impacts on the contents of the Aerodrome Manual, these should be incorporated and a revised version submitted to CAA.*

*5.17 In addition to this, the aerodrome operator (EASA aerodromes only) should resubmit the amended CB [Certification Basis] reflecting the changes. The CAA will sign the CB to confirm its approval and forward this to the aerodrome operator."*

4.1.5 The Applicant will therefore need to demonstrate to the CAA, the expert body on airport safety, that all necessary works have been undertaken such that the change to the use of the northern runway may be introduced safely and effectively. There is no need for the DCO to duplicate the regulation of this process and, in fact, imposing restrictions on the phasing of Work Nos. 2-7 through the DCO could hinder the Applicant's flexibility to respond to input from the CAA during construction.

---

<sup>2</sup> Available here: [www.caa.co.uk/publication/download/13963](http://www.caa.co.uk/publication/download/13963)



## 5 Action Point 4

- 5.1.1 The Examining Authority has asked the Applicant to consider whether the use of any of Work Nos. 8-34 should be related to the proposed increase in commercial ATMs or passenger numbers. The following response is provided.**
- 5.1.2 Work Nos. 8-34 relate to airport support facilities, terminal works and to hotels, offices and car parking. All are related to, ancillary to or associated with the increase in passengers and air transport movements enabled by Work Nos. 1-7. A number of the works represent the replacement of facilities at the airport which are displaced by other works. A high-level indication of their likely phasing is set out in **ES Appendix 5.3.3: Indicative Construction Sequencing [APP-088]**.
- 5.1.3 The Applicant does not consider that there is any need for the DCO to constrain the phasing or timing of the provision of these works by reference to ATMs or other metrics. The sequencing of the authorised development is a matter which the Applicant is best placed to decide, making real-time decisions about the order and timing of works based on need and well-ordered construction.
- 5.1.4 The cited works are situated within the current airport boundary and the Applicant therefore has the greatest interest in the co-ordinated and streamlined roll out of the facilities. The Applicant has no commercial interest in constructing facilities without sufficient demand and so the phasing of these works will be, in effect, self-regulating.
- 5.1.5 Orderly construction is ensured by the terms of the **ES Appendix 5.3.2: Code of Construction Practice [APP-082]** ("CoCP"), whilst the considered deployment of car parking will be regulated by the need to achieve and observe the mode share and other commitments set out in **ES Appendix 5.4.1: Surface Access Commitments [APP-090]**.
- 5.1.6 As was discussed in greater detail at ISH 4: Surface Transport, the draft DCO and proposed section 106 agreement provide for a range of mitigation measures to address the potential effects of ATM and passenger growth, including controls relating to surface access which for the reasons outlined in that ISH are considered sufficient to address the effects of growth.

## 6 Action Point 5

- 6.1.1 The Examining Authority has asked the Applicant to consider the need for a requirement to clarify dependency of hotel development on an increase in**

**commercial ATMs or passenger numbers. The following response is provided.**

- 6.1.2 The Applicant queries whether this form of control is necessary given that the hotels form part of the wider provision to cater for airport demand, on and off airport. The airport is recognised as a sustainable and suitable location for airport-related hotel development. Local policy does not seek to regulate or manage the pace of provision, which will be regulated by demand. The Applicant notes that there may be benefits in building the hotels earlier in anticipation of increased demand and that additional control is not necessary.

## 7 Action Point 6

**7.1.1 The Examining Authority has asked the Applicant to consider whether the level of design detail in Schedule 1 is sufficient, and consider whether more information can be included in the design principles. The following response is provided.**

- 7.1.2 The Applicant considers that the level of detail in the descriptions of works in Schedule 1 to the draft DCO is adequate. The DCO is not the appropriate vehicle for detailed design information, which the Applicant considers is best outlined at the application stage in the indicative designs and design principles in Appendix 1 of the **Design and Access Statement [APP-253]**.

- 7.1.3 When detailed design is brought forward, this information must be submitted to Crawley Borough Council ("**CBC**") or the relevant highway authority for approval (in consultation with relevant stakeholders) under requirements 4, 5 and 10. Through these requirements the local authorities can exercise design control over the authorised development and scrutinise the final details. Where works are "excepted development" and exempted from detailed design approval, the Applicant must still consult with CBC on their design and the works must be carried out in accordance with the design principles in Appendix 1 of the **Design and Access Statement [APP-253]**.

- 7.1.4 The Applicant will consider whether it is possible to include further information in the design principles included in Appendix 1 of the **Design and Access Statement [APP-253]** in light of the Examining Authority's comments and input from Interested Parties and will add additional detail to these where considered appropriate and useful.

## 8 Action Point 6.1

- 8.1.1 **The Examining Authority has asked the Applicant to consider whether a schedule of parameters should be included in the DCO to control maximum numbers of and dimensions of structures (applicable to Work Nos. 15, 16, 19, 20 and 26-29). The following response is provided.**
- 8.1.2 Article 6(1) of the draft DCO provides that each numbered work must be situated within the limits of the corresponding numbered area shown on the **Works Plans [AS-129]**. For the highway improvement works (Work Nos. 35, 36 and 37), article 6(2) requires that they are situated within the areas shown on these plans for those three works taken as a whole. This controls the lateral extent of all numbered works comprising the authorised development.
- 8.1.3 The vertical extent of relevant works is controlled by article 6(3), which provides that the specified works may not deviate vertically from the levels shown or noted on the **Parameter Plans [AS-131]**. As explained in section 5.6 of the **Planning Statement [APP-245]**, to balance ensuring necessary flexibility for the final detailed design of the authorised development with ensuring a robust environmental impact assessment, maximum parameters for height have been defined for works involving the construction of new structures whose detailed design will be subject to refinement during implementation.
- 8.1.4 The Applicant considers that the use of article 6 of the draft DCO and the plans referenced therein is a clearer and preferable approach to limits of works than specifying parameters in tabular form in the body of the DCO itself.
- 8.1.5 As regards the works specifically flagged in Action Point 6.1, limits have been specified on the **Parameter Plans [AS-131]** for Work Nos. 15 (constructing the Satellite Airport Fire Service Facility), 16 (constructing a new aircraft hangar), 26 (constructing a hotel north of multi-storey car park 4), 27 (constructing a hotel on the car rental site) and 28 (constructing a hotel, office and multi-storey car park on the Car Park H site). The dimensions of these structures are adequately controlled through article 6 of the draft DCO by reference to the **Parameter Plans [AS-131]**.
- 8.1.6 Work No. 19 is the construction of pumping station 2a. As per paragraph 5.2.182 of **ES Chapter 5: Project Description [PDLA-006]**, this is situated near to – and replaces – the existing pumping station 2. The replacement pumping station will require an area of approximately 10m<sup>2</sup> and be approximately 2m in height (above ground level). It is not considered necessary to specify a vertical limit for this work.

- 8.1.7 Work No. 20 is the realignment of Larkins Road further north to accommodate the extension to Taxiway Lima. As a road at ground level, it is not considered necessary to specify a vertical limit for this work.
- 8.1.8 Work No. 29 is the conversion of the existing Destinations Place office into a hotel. As per paragraph 5.2.113 of **ES Chapter 5: Project Description [PDLA-006]**, any external changes would not exceed the width of the existing building and the height of the existing roof plant and equipment. As no structure exceeding the dimensions of the current structure is proposed, it is not considered necessary to specify a vertical limit for this work.
- 8.1.9 As above, Work Nos. 19, 20 and 29 are subject to article 6(1) as regards their lateral extent.

## 9 Action Point 7

- 9.1.1 **The Examining Authority has asked the Applicant to consider whether maximum number of car parking spaces for each car park should be specified. The following response is provided.**
- 9.1.2 The Applicant does not consider it necessary or beneficial to specify the precise numbers of car parking spaces in the work descriptions for proposed new car parking in Schedule 1 of the draft DCO. The overall level of provision will be regulated by the need for the Applicant to achieve and sustain the mode share commitments set out in **ES Appendix 5.4.1: Surface Access Commitments [APP-090]** ("SACs"). The level of car parking is one of a number of inter-related tools the Applicant has to ensure that these commitments are met and restricting the deployment of that tool would give the Applicant less flexibility in so doing.
- 9.1.3 Additionally, the Applicant and the local authorities ultimately have a very similar objective as regards on-airport parking – both seek to enhance access to the airport by sustainable modes but both also recognise that any shortage of car parking at the airport is likely to result in greater pressure for off-airport parking or parking in residential areas. In this context, specific numerical restrictions in the DCO are not necessary.
- 9.1.4 At Deadline 1 the Applicant has submitted a **Car Parking Strategy** (Doc Ref. 10.5) which provides further information relating to existing on-airport parking at Gatwick Airport and the rationale for the approach to car parking proposed as part of the application, particularly in respect of parking provision and management in the context of the proposed SACs.

- 9.1.5 The design and appearance of the proposed car parks, which will constitute "excepted development" under the draft DCO, will be regulated by the requirement to be constructed in accordance with the design principles in Appendix 1 of the **Design and Access Statement** [[APP-253](#)] (requirement 4(5)) and will be subject to consultation with CBC (requirement 4(4)).

## 10 Action Point 8

- 10.1.1 **The Examining Authority has asked the Applicant to provide clarification regarding what is mitigation works to address adverse effects and what is associated development. The following response is provided.**

- 10.1.2 Paragraph 6.3.52 onwards of **ES Chapter 6: Approach to Environmental Assessment** [[APP-031](#)] sets out the Applicant's approach to mitigation measures for the Project. Embedded mitigation measures have been incorporated throughout the design of the proposed development and it is therefore not the case that solely certain numbered works are mitigation measures and others serve no mitigating function.

- 10.1.3 This notwithstanding, the Applicant has identified the following numbered works which serve a clear mitigatory function:

- **18** (replacement of the western noise mitigation bund)
- **30(a)** (construction of an attenuation storage facility at Car Park Y)
- **31(b)** (flood compensation area at Car Park X)
- **34** (removal of Car Park B and delivery of replacement open space).
- **35, 36 and 37** (surface access works)
- **38** (habitat enhancement area and flood compensation area at Museum Field)
- **39** (works associated with the River Mole)
- **40** (replacement open space to the north east of Longbridge Roundabout)
- **41** (ecological area at Pentagon Field)
- **42** (habitat enhancement area along Perimeter Road East and Perimeter Road South including replacement hedgerows and habitat suitable for bats; weir and fish pass)

- 10.1.4 The Applicant has secured the timing of the delivery of mitigation measures where this is necessitated by the Environmental Statement as follows:



### National highway works

- 10.1.5 The **Transport Assessment [AS-079]** assumes that dual runway operations will commence in 2029 and concludes that the proposed highway improvement works need to be delivered within three years of the commencement of dual runway operations to accommodate the resulting increased demand from the Project on the highway network around the airport. On the basis that the highway improvement works are completed within this timeframe, the modelling shows *"no significant queueing or congestion indicated at any location"* [122]. The highway works provide the necessary additional network capacity to accommodate the increase in airport-related demand arising from the other components of the Project.
- 10.1.6 This feeds into the conclusion of **ES Chapter 12: Traffic and Transport [AS-076]** that there would be no significant effects in the 2032 assessment year, on the basis that the highway improvements have been delivered.
- 10.1.7 Requirement 6(2) of the draft DCO therefore secures that the undertaker will use reasonable endeavours to complete the national highway works by the third anniversary of the commencement of dual runway operations, to ensure that the negative effects on the highway network otherwise identified in the transport modelling are mitigated.
- 10.1.8 The inclusion of 'reasonable endeavours' is warranted because the granting of a provisional certificate allowing the improved highway to be reopened is within National Highways' gift. Imposing a requirement on GAL to obtain a provisional certificate by a set date would expose GAL to potential criminal liability for an action outside of its sole control.

### Flood compensation

- 10.1.9 As per **ES Appendix 11.9.6: Flood Risk Assessment [AS-078]**, the Project encroaches on existing floodplain areas as well as introducing new areas of hard surfacing that alter surface water runoff. Therefore, a flood mitigation strategy has been developed for the Project which includes flood compensation areas, syphons, watercourse diversions and – where required – surface water drainage, storage and attenuation features.
- 10.1.10 Key measures in this strategy are the creation of flood compensation areas at Car Park X and Museum Field, the construction of an attenuation facility at Car Park Y and works to the route, culverts and syphons for the River Mole. As per **ES Appendix 5.3.3: Indicative Construction Sequencing [APP-088]**, the majority of these measures are intended to be carried out early in the

construction timetable (2024/5). Requirement 23 secures that these compensation measures are delivered in accordance with a timetable set out in a delivery plan submitted to and agreed by CBC (in consultation with the Environment Agency). This ensures that flood compensation measures will be in place before additional flood risk is created by construction activities.

#### Replacement open space

- 10.1.11 Article 40 provides that special category land proposed to be permanently acquired pursuant to the DCO is not to vest in the undertaker until the undertaker has acquired the replacement land and has submitted an open space management plan to CBC for approval.
- 10.1.12 The open space management plan must be substantially in accordance with the outline landscape and ecology management plan and must include a timetable for the laying out of the replacement land as open space. The undertaker is required to comply with the open space management plan once approved.
- 10.1.13 This ensures that a plan for the delivery of replacement open space is secured before the open space proposed to be acquired by the Applicant is no longer accessible.

#### Streets and public rights of way

- 10.1.14 Article 13 provides that, prior to stopping up the streets specified in Part 1 of Schedule 3 to the draft DCO, the undertaker must complete the new street to be substituted for it (also specified in that Part) or provide a temporary alternative route.
- 10.1.15 Similarly, Article 15 provides that, prior to stopping up public rights of way, the undertaker must provide substitute rights of way (either permanent or temporary, depending on which right of way is being stopped up).
- 10.1.16 These articles ensure that impacts that may arise from the stopping up of these highways are mitigated by the provision of alternatives, where required.

## 11 Action Point 9

- 11.1.1 **The Examining Authority has asked the Applicant to provide a reference to the submission that shows the extent of operational land or provide such clarification through an additional submission. The following response is provided.**

- 11.1.2 This query was raised in the context of the Applicant's definition of "excepted development" in the draft DCO. Further information on the meaning and use of "excepted development" in the draft DCO is set out in response to Action Point 10 below. This response provides context in relation to the term "operational land".
- 11.1.3 The term "operational land" is defined in section 263(1) of the Town and Country Planning Act 1990 (the "**1990 Act**") in relation to statutory undertakers as:
- "(a) land which is used for the purpose of carrying on their undertaking; and*
- (b) land in which an interest is held for that purpose.*
- (2) Paragraphs (a) and (b) of subsection (1) do not include land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings."*
- 11.1.4 Section 264 of the 1990 Act provides that, if the interest in the land referred to in section 263(1)(b) was acquired after 6 December 1968 then it is not considered operational land unless one of section 264(3) or section 264(4) applies:
- Section 264(3)**
- "(a) there is, or at some time has been, in force with respect to it a specific planning permission for its development; and*
- (b) that development, if carried out, would involve or have involved its use for the purpose of the carrying on of the statutory undertakers' undertaking"*
- Section 264(4)**
- "(a) the undertakers' interest in the land was acquired by them as the result of a transfer under the provisions of the... Airports Act 1986... from other statutory undertakers; and*
- (b) immediately before transfer the land was operational land of those other undertakers."*
- 11.1.5 Given the above provisions, there are four categories of land to which the Order applies to consider for the purposes of "operational land":
- land which the Applicant currently uses for the purpose of carrying on its undertaking ("**Land A**");

- land in which the Applicant currently owns an interest for the purpose of carrying on its undertaking and which it acquired pursuant to the Airports Act 1986 ("**Land B**");
- land in which the Applicant currently owns an interest for the purpose of carrying on its undertaking and which it did not acquire pursuant to the Airports Act 1986 but acquired subsequently ("**Land C**"); and
- land in which the Applicant does not currently own an interest ("**Land D**").

#### Land A

- 11.1.6 Land which the Applicant currently uses for the purpose of carrying on its undertaking is operational land by virtue of section 263(1)(a). This will capture most of the land within the airport boundary.

#### Land B

- 11.1.7 There is land within the Order limits which the Applicant does not currently use for the purpose of carrying on its undertaking but in which it holds an interest for such purpose (i.e. such that it may be put to future operational use). This land was not acquired by the Applicant itself prior to 6 December 1968 but was acquired from the British Airports Authority ("**BAA**") pursuant to the Airports Act 1986 and, prior to this time, the land was operational land of BAA. Sections 263(1)(b) and 264(4) therefore apply and this land is operational land of the Applicant.

#### Land C

- 11.1.8 There is also land within the Order limits which the Applicant does not currently use for the purpose of carrying on its undertaking but in which it holds an interest for such purpose where that interest was not acquired pursuant to the Airports Act 1986 and the acquisition date was after 6 December 1968. This land satisfies section 263(1)(b) but not section 264(4).
- 11.1.9 However, it is still capable of being operational land if section 264(3) applies such that there is, or at some time has been, "*specific planning permission*" in force for its development. Where the Applicant has previously sought such planning permission over parcels of "Land C", this land will already constitute operational land. However, insofar as there are parcels which have never benefitted from specific planning permission, article 9(1) of the draft DCO implements well-precedented drafting that provides that "*Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)... of the 1990 Act*". All such land will therefore fall within section 264(3) after grant of the DCO.

## Land D

- 11.1.10 As regards parcels of land within the Order limits which the Applicant does not currently use for the purpose of carrying on its undertaking and in which the Applicant owns no interest (such as highways currently owned by National Highways or other highway authorities), these are not currently the Applicant's operational land. However, insofar as the Order authorises the compulsory acquisition of such parcels of land by the Applicant, the Applicant exercises those powers and said land is then used or held by the Applicant for the purpose of carrying on its undertaking, that land would then satisfy section 263(1)(a) or 263(1)(b).
- 11.1.11 For the latter, this land would not satisfy section 264(3) – it not having been acquired pursuant to the Airports Act 1986 – but would, by virtue of article 9(1) of the draft DCO, satisfy section 264(4). This land would constitute operational land of the Applicant for so long as the Applicant used the land for the purpose of carrying on its undertaking or held an interest in that land for such a purpose.
- 11.1.12 Therefore, all land within the Order limits used by the Applicant for the purpose of carrying on its undertaking or in respect of which the Applicant already owns an interest or can acquire an interest by exercise of the compulsory acquisition powers in the DCO could constitute operational land of the Applicant. However, such land would only constitute operational land if the land were used, or the interest were held, for the purpose of the Applicant carrying on its undertaking. As a result, whether a specific parcel of land is operational land at any point in time is a fact-specific question and depends on the purposes for which that land is being used or held at that point in time.

## 12 Action Point 10

- 12.1.1 **The Examining Authority has asked the Applicant to clarify which Work Nos. fall within the description of excepted development not requiring the making of the DCO to secure development consent. The following response is provided.**
- 12.1.2 Paragraph 1 of Schedule 2 to the draft DCO defines "excepted development" as *"any part of the authorised development which falls within Schedule 2, Part 8, Class F of the [Town and Country Planning (General Permitted Development) (England) Order 2015] and does not fall within the description of development in F1 of those Regulations"*.



- 12.1.3 Class F covers *"the carrying out on operational land by a relevant airport operator or its agent of development (including the erection or alteration of an operational building) in connection with the provision of services and facilities at a relevant airport."*
- 12.1.4 Paragraph F1 specifies that:
- "Development is not permitted by Class F if it would consist of or include—*
- (a) the construction or extension of a runway;*
  - (b) the construction of a passenger terminal the floor space of which would exceed 500 square metres;*
  - (c) the extension or alteration of a passenger terminal, where the floor space of the building as existing at 5th December 1988 or, if built after that date, of the building as built, would be exceeded by more than 15%;*
  - (d) the erection of a building other than an operational building; or*
  - (e) the alteration or reconstruction of a building other than an operational building, where its design or external appearance would be materially affected."*
- 12.1.5 Paragraph O of Part 8 defines "operational building" as *"a building, other than a hotel, required in connection with the movement or maintenance of aircraft, or with the embarking, disembarking, loading, discharge or transport of passengers, livestock or goods at a relevant airport"*.
- 12.1.6 On the basis of the above provisions, and in the context of the fact-specific definition of "operational land" explained in response to Action Point 9, the Applicant has preliminarily categorised the numbered works in Schedule 1 and considers that the following would constitute "excepted development":
- 1 (reposition northern runway)
  - 2 (constructing Runway Access Track)
  - 3 (converting aircraft stands)
  - 4 (works to taxiways)
  - 5 (works to Aircraft Holding Area – Charlie Box)
  - 6 (constructing Pier 7)
  - 7 (constructing Oscar Area)
  - 8 (removing airside support facilities)

- **9** (constructing the CARE)
- **10** (constructing replacement Motor Transport Facilities)
- **11** (constructing replacement Grounds Maintenance Facilities)
- **12** (constructing replacement Airfield Surface Transport Facilities)
- **13** (constructing replacement Rendezvous Point North)
- **14** (removing and replacing Fire Training Ground)
- **15** (constructing Satellite Airport Fire Service Facility)
- **16** (constructing new hangar)
- **17** (relocating Hangar 7 support structures)
- **18** (removing and replacing western noise mitigation bund)
- **19** (constructing pumping station 2a)
- **20** (realigning Larkins Road)
- **24** (upgrading North Terminal forecourt)
- **25** (upgrading South Terminal forecourt)
- **28(b)-(e)** (works at Car Park H, excluding hotel)
- **30** (constructing Car Park Y)
- **31** (works at Car Park X)
- **32** (replacing North Terminal Long Stay car park)
- **33** (works at Purple Parking)
- **38** (habitat enhancement and flood compensation at Museum Field)
- **39** (works associated with the River Mole)
- **41** (ecological area at Pentagon Field)
- **42** (habitat enhancement area along Perimeter Road East and South)
- **43** (water treatment works)

12.1.7 As noted in response to Action Point 9, whether works would in fact constitute excepted development would depend on the factual question of whether the land on which they are being delivered is "operational land" at that point in time.

## 13 Action Point 11

**13.1.1 The Examining Authority has asked the Applicant to submit a draft s106 agreement.**

13.1.2 As requested, this will be submitted at Deadline 2.

## 14 Action Point 12

**14.1.1 The Examining Authority has asked the Applicant to consider the provision of a construction stakeholder engagement plan (or equivalent) as a DCO certified document. The following response is provided.**

14.1.2 The Applicant has considered this request further and will be providing either an updated CoCP or a new Annex to the CoCP at Deadline 3. This will provide further details on the measures and procedures to be followed in engaging with stakeholders and the local community in respect of the construction works.