Gatwick Airport Northern Runway Project

The Applicant's Response to the Examining Authority's Written Questions – Development Consent Order and Control Documents

Book 10

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1 Response to the Examining Authority's Written Questions – Development Consent Order and Control Documents

The below table sets out the Applicant's response to the Examining Authority's Written Questions relating to Development Consent Order and Control Documents.

ExQ1	Question to:	Question:
DEVELOPMENT CONSENT ORDER AND CONTROL DOCUMENTS		
Please note: all references to the dDCO and the Explanatory Memorandum (EM) are to the versions submitted at Deadline 1 [REP1- 005 and REP1-007] respectively unless otherwise indicated.		
DCO.1.1	IPs	**Potential Changes to the DCO and Control Documents** At ISH2 the ExA asked all parties to propose matters which they would wish to see in the DCO, any other control document or a legal agreement early in the Examination. Where an IP wishes to see a change to the dDCO, any control document or the draft s106 agreement (when published) they are asked to specify, as precisely as possible, the amended wording they would wish to be included.
		N/A – this question is not directed to the Applicant.

DCO.1.2	The Applicant	**Extent of Proposed Works** At paragraph 5.2.14 of ES Chapter 5: Project Description [REP1-016] reference is made to the maximum extent and area of each Work Number (Work No.) being shown on the Work Plans and Parameter Plans with the approximate level of the finished works, the height of the structure (m) and/ or maximum parameter height within which this Work would be undertaken described within ES Chapter 5. The maximum extents for each Work No. are also described as being in Schedule 2 of the dDCO. Where in the dDCO are the maximum extents set out? Should these be provided in a separate schedule? If not, why not?
		Action Point 6.1 in **The Applicant's Response to Actions from Issue Specific Hearing 2: Control Documents / DCO** [REP1-063] sets out the approach in the dDCO to securing the lateral extent and area of the works, as well as to the use of the Parameter Plans to secure the maximum parameters for height for works involving the construction of new structures whose detailed design will be subject to refinement during implementation. The Applicant considers that the use of article 6 of the dDCO and the plans referenced therein is a clearer and preferable approach to specifying maximum extents in tabular form in a schedule to the DCO. Plans can be more easily scrutinised during the examination than numerical limits or limits by reference to coordinates and are more easily referenced by contractors post-consent. The Works Plans and the Parameter Plans are documents to be certified by the Secretary of State under article 52 of the DCO and thus have no lesser status or controlling effect when referenced by article 6 than a

		Schedule to the DCO. The reference in paragraph 5.2.14 of **ES Chapter 5: Project Description** [REP1-016] to the maximum extents also being described in Schedule 2 of the dDCO is to requirements 4 and 5, which referred to the limits by express reference to the Works Plans in version 5.0 of the **dDCO** [REP1-004] and, as of version 6.0 of the dDCO submitted at Deadline 3 (Doc Ref. 2.1 v6), refer to the limits by way of cross-reference to Article 6.
DCO.1.3	The Applicant	**Securing the Operational Lighting Framework** At paragraph 5.2.205 of the ES [REP1-016] reference is made to an Operational Lighting Framework [APP- 077]. How would this be secured through the DCO?
		The **Operational Lighting Framework** [APP-077] collates the high-level criteria and guidance relating to the provision of exterior lighting for the Project and provides visualisations of how lighting could be used in the passenger-facing areas of development. This level of detail has been provided for illustrative purposes as the exact lighting specifications will be confirmed through the detailed design. The lighting principles from the Operational Lighting Framework which will apply to the detailed design of the development have been incorporated into the **Design Principles** (Appendix 1to the Design and Access Statement (Doc Ref. 7.3 v3) which are secured by DCO Requirement 4. As such, detailed designs referred to in DCO Requirement 4 must be in accordance with these lighting

		principles. The relationship between the Operational Lighting Framework and the Design Principles is described at paragraph 5.2.209 of **ES Chapter 5: Project Description** [REP1-016]
DCO.1.4	The Applicant	**Civil Aviation Act – Regulation of Noise and Vibration** Paragraphs 1.5.27/ 8 of the Planning Statement [APP-245] note that section 78 of the Civil Aviation Act 1982 provides for the regulation of noise and vibration from aircraft. How would this provision relate to controls through the DCO?
		The ExA will note that those paragraphs are located under the heading "Matters covered under separate legislative frameworks", and that at paragraph 1.5.26 it is stated that "GAL will ensure compliance with all applicable laws at all stages of the Project." Section 80 of the Civil Aviation Act 1982 (the "**Act**") provides the Secretary of State with the power to designate aerodromes in Great Britain for the purpose of regulating noise and vibration from aircraft using those airports, including by setting noise controls. Heathrow, Gatwick, and Stansted airports have been designated to avoid, limit or mitigate the effect of noise from aircraft since 1971. Section 78 of the Act provides the basis upon which the Secretary of State may regulate to direct aircraft operators using designated airports, or the designated airport operators themselves, to adopt procedures which limit noise and vibration. This includes that: - the Secretary of State may publish notices imposing duties on aircraft operators to secure that, after the aircraft takes off or, as the case may be, before it lands at the aerodrome, such

		requirements as are specified in the notice are complied with in relation to the aircraft, being requirements appearing to the Secretary of State to be appropriate for the purpose of limiting or of mitigating the effect of noise and vibration connected with the taking off or landing of aircraft at the aerodrome. ○ Such requirements can be seen in the Aeronautical Information Publication (AIP) for Gatwick Airport, which includes Noise Abatement Procedures that must be adhered to (AD2.21), which relate to the manner in which aircraft must be operated when departing and arriving to the Airport at different times of the day and night and in different climactic conditions. - The Secretary of State may also, if he considers it appropriate for the purpose of avoiding, limiting or mitigating the effect of noise and vibration connected with the taking-off or landing of aircraft at a designated aerodrome, prohibit aircraft from taking off or landing, or limit the number of occasions on which they may take off or land, at the aerodrome during certain periods. ○ It is by virtue of this Section 78(3) of the Act that the night flight movement limit and quota count restrictions on Gatwick Airport, and the other designated airports, are effected. The noise related controls secured through the DCO will operate separately from the requirements imposed by the Secretary of State pursuant to Section 78 of the Act. Those requirements imposed by Section 78 of the Act are assumed to continue to operate alongside the DCO. Any future new or changed requirements of the Secretary of State would be expected to take into account the effect of the noise controls secured through the DCO, as well as other

		operational controls secured through the DCO as relevant, as those relate to the functioning of the airport and the noise environment. Given those requirements are secured by separate primary legislation, there is no need to otherwise secure those through the DCO.
DCO.1.5	The Applicant	**Heads of Terms for s106 Agreement** Table 5.2 of the Planning Statement [APP-245] outlines the proposed Heads of Terms for the new s106 Agreement. Why do Surface Access Commitments need to be addressed through the agreement and not the DCO? How does this relate to Requirement (R) 20 of the dDCO? Why does general engagement need to be addressed through a s106 agreement and not through the DCO? Is 'promoting health inequality' a typo? To what extent are s106 matters mitigation as opposed to wider community benefits?
		a) Table 5.2 of the Planning Statement lists the heads of terms for the DCO s106 Agreement in the centre column and the summary terms for the proposed DCO requirements in the right-hand column. The Surface Access Commitments have been secured by DCO Requirement 20. In any event, Table 5.2 has been superseded by the latest versions of the draft DCO s106 Agreement

		and the draft DCO. b) As above. c) "General engagement" is a heading in Table 5.2 which then lists the relevant mechanisms proposed to be secured through the DCO s106 Agreement and the draft DCO. The existing engagement which is currently secured through the 2022 s106 Agreement and is proposed to continue in the draft DCO s106 Agreement (as shown in the table in Appendix A to the Applicant's response to Actions ISH 2-5 [REP2-005]). The dDCO also includes a number of obligations for the parties to engage but these are specific to discharge of requirements or entering into specific agreements etc. As above, Table 5.2 has been superseded by the latest versions of the draft DCO s106 Agreement and the draft DCO d) Yes – it should read "promoting health equality". The details of this principle are set out in the ESBS which is Appendix 4 to the draft DCO s106 Agreement. This Table 5.2 has been superseded by the latest versions of the draft DCO s106 Agreement and the draft DCO The Applicant's approach towards the use of DCO Requirements and s106 obligations is set out in **The Applicant's Response to Actions ISH 2-5** [REP2-005]. The obligations secured through the draft DCO s106 Agreement include measures which are both mitigation and wider community benefits. The Environmental Statement identifies those measures that are mitigation and enhancements in the context of the full narrative of the assessments. There are also a number of obligations within the draft DCO s106 Agreement which have been continued from the 2022 Agreement because they have proved beneficial to the JLAs, the Applicant or both in the operation of the Airport in the context of the local area. These are shown in the table in Appendix A to **The**

		Applicant's response to Actions ISH 2-5 [REP2-005].
DCO.1.6	The Applicant	**Mitigation Route Map** Paragraph 5.5.10 of the Planning Statement [APP-245] states that the Mitigation Route Map is submitted for information only. Why is it proposed for information only and how can this be the case when it is an Appendix of the ES which is proposed to be a certified document?
		The **Mitigation Route Map** (MRM) [REP2-011] sets out how mitigation has been, or will be, translated into clear and enforceable controls, either via requirements in the Development Consent Order, planning obligations under the s106 Agreement or through other existing legislative/regulatory regimes. It is for information purposes to provide a clear audit trail of the mitigation measures and their respective controls, and does not function as a control document or, by consequence, a document that requires certification. The control documents described in the MRM are to be certified under Schedule 12 of the **dDCO** (Doc Ref. 2.1 v6), thereby securing the necessary mitigation. It has been described as "for information only" so that it is not confused with a control document itself and to indicate that it is, in fact, a sign-posting document. It will be certified as part of the Environmental Statement and in this context.
DCO.1.7	The Applicant RPAs	**Role of Discharging Authorities** Paragraph 5.5.13 of the Planning Statement [APP-245] recognises that there will be different discharging authorities for DCO requirements depending on the works and the nature of the

	RHAs Natural England (NE) EA	requirement. Do the discharging authorities and relevant consultees have sufficient resources to discharge requirements and will the Applicant be providing support for this work?
		Drafting has been included in version 6.0 of the **dDCO** submitted at Deadline 3 (Doc Ref. 2.1 v6) to provide for the payment of fees by the undertaker to discharging authorities providing their agreement, endorsement or approval in respect of requirements to which Part 1 of Schedule 11 to the DCO applies. The specified fee is by reference to the fee payable to local planning authorities in respect of the discharge of planning conditions for non-householder development in regulation 16 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. This approach will resource discharging authorities for the purpose of the Project and is well precedented, including in paragraph 4 of Schedule 11 to the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024, paragraph 2 of Schedule 4 to the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and paragraph 26 of Schedule 2 to the Manston Airport Development Consent Order 2022.
DCO.1.8	The Applicant	**Securing Surface Access Commitments** Paragraph 8.4.24 of the Planning Statement [APP-245] states that within the Surface Access Commitments GAL commits to achieving various modes shares within three years of the opening of

		the new northern runway. What sanction is there if these commitments are not met?
		An updated version of the **Surface Access Commitments (SAC)** (Doc Ref. 5.3 v2) is submitted at Deadline 3 with amendments to section 6 which clarifies the process that must be followed where there is a breach or an anticipated breach of the mode share commitments. This includes a requirement to prepare a SAC Mitigation Action Plan if two successive Annual Monitoring Reports continue to show that the mode share commitments have not been met or, in the Applicant's or the TFSG's reasonable opinion, suggests they may not be met (having regard to any circumstances beyond the Applicant's control which may be responsible). The TFSG can consider, comment on and approve or reject the SAC Mitigation Action Plan and the TFSG may propose additional or alternative interventions it believes to be necessary to achieve the mode share commitments. The Applicant must incorporate these interventions into the SAC Mitigation Action Plan or provide valid reasons why it does not consider they are necessary to achieve the mode share commitments; or offer suggestions for alternative actions where there is evidence they will achieve or exceed the same goal. The Applicant will implement the measures in the SAC Mitigation Action Plan once approved with the TFSG. Where the TFSG does not agree with any reasons put forward for the non-inclusion of the proposed measures, it must give the Applicant its reasons in writing. Within 90 days of receiving the TFSG's written reasons, the Applicant must submit the SAC Mitigation Action Plan and the proposed

		measures must be submitted to the Secretary of State who may approve the action plan with or without the measures or such additional or alternative interventions it considers reasonably necessary to achieve the mode share commitments having had regard to the materials in the submission. All representations submitted by the TFSG must be included in the submission to the Secretary of State. The Applicant will implement the measures in the SAC Mitigation Action Plan approved by the Secretary of State unless otherwise agreed with the TFSG. In addition, the Applicant must make available on its website a copy of the materials submitted to the Secretary of State and any materials received from the Secretary of State, subject to any confidential or commercially sensitive materials being appropriately redacted.
DCO.1.9	The Applicant	**Art. 2 (Interpretation)** The 'airport boundary plan' which is identified as Appendix 1 to the Glossary in Schedule 12 is titled 'General Arrangement Airport Extent'. Should the plan at Appendix 1 to the Glossary be renamed 'airport boundary plan' for consistency?
		An updated version of the **Glossary** (Doc Ref. 1.4 v2) is submitted at Deadline 3, with Appendix 1 re-titled to the "Airport Boundary Plan" to correspond with Schedule 12 of the **dDCO** (Doc Ref. 2.1 v6).
DCO.1.10	The Applicant	**Art. 2 (Interpretation). Definition of 'Order land'** Should the definition include 'within the limits of land to be acquired or used permanently or

		temporarily' or 'within which the authorised development may be carried out'. If not, why not?
		This additional wording is not necessary because the definition of "Order land" is by reference to the *"land shown shaded pink or blue on the land plans…"* On the **Land Plans** [AS-015], land shown shaded pink is that which would be subject to permanent acquisition powers and land shown shaded blue is that which would be subject to permanent acquisition of rights powers. All shaded land would be subject to temporary possession powers. The shaded land therefore shows the land *"to be acquired or used permanently or temporarily"* and thus adding this wording to the definition of "Order land" would be duplicative. The same consideration applies for the latter suggested wording because all shaded land is within the Order limits and is therefore land *"within which the authorised development may be carried out".*
DCO.1.11	The Applicant	**Art. 2 (Interpretation)** Does 'special category land' need defining in addition to 'Special category land plan'?
		In version 6.0 of the **dDCO** submitted at Deadline 3 (Doc Ref. 2.1 v6), "special category land" has been defined as *"land forming part of a common, open space or fuel or field garden allotment, as identified shaded orange and blue on the special category land plans",* to accord with the description of land to which section 131 of the Planning Act 2008 applies, as per section 131(1).
DCO.1.12	The	**Art. 2 (Interpretation). Definition of 'street'.**

	Applicant	Should ‘and includes any footpath’ be added after ‘between two carriageways,’?
		This additional wording is not considered to be necessary because "street" is defined by reference to section 48 of the New Roads and Street Works Act 1991, meaning *"the whole or part of any of the following, irrespective of whether it is a thoroughfare—* *(a) any highway, road, lane, footway, alley or passage…"* A footpath is a form of highway (see e.g. section 329 of the Highways Act 1980) and is therefore already captured in this definition.
DCO.1.13	The Applicant	**Art. 2 (Interpretation). Definition of ‘undertaker’.** Explain why the definition has been removed in the latest version of the dDCO. If required, include reference in the next dDCO Schedule of Changes.
		The definition has not been removed but, due to a formatting error, immediately follows the definition of "the tribunal" in article 2 of version 5.0 of the **dDCO**, rather than being on a new line. This has been remedied in version 6.0 of the **dDCO** submitted at Deadline 3 (Doc Ref. 2.1 v6).
DCO.1.14	The Applicant	**Art. 2 (6) (Interpretation)** Should ‘relevant plans’ be amended to be more specific eg rights or way plans, land plans or be defined in Article 2 (1)?

		In version 6.0 of the **dDCO** submitted at Deadline 3 (Doc Ref. 2.1 v6), article 2(6) has been amended to clarify the drafting intention as follows: *"References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered* ***on the plans to which the reference applies****."* (emphasis added)
DCO.1.15	The Applicant	**Art. 2 (9) (Interpretation)** Explain/ justify the inclusion of this sub-paragraph.
		Article 2(9) is an interpretative provision clarifying that the inclusion of the phrase *"materially new or materially different"* in the provisions noted immediately below does not prevent the undertaker from carrying out works that would avoid, remove or reduce an adverse environmental effect reported in the ES – i.e. works that would have a positive environmental effect that is materially new or different to those reported in the ES. The dDCO provides that: • specified types of works constitute "maintaining" the authorised development (article 2); • Crawley Borough Council or the relevant highway authority may approve works in excess of the limits in article 6(1)-(5); • specified types of works constitute "ancillary or related development" (Schedule 1); and • discharging authorities may only *"otherwise agree"* details or actions under Schedule 2

		(requirements), in each case provided that they do not give rise to *"any materially new or materially different environmental effects"* in comparison with those reported in the environmental statement. The wording of *"materially new or materially different"* is now widely precedented in made DCOs, including the recent HyNet Carbon Dioxide Pipeline Order 2024, National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and A66 Northern Trans-Pennine Development Consent Order 2024. It is further noted that the Secretary of State's Decision Letter for the Great Yarmouth Third River Crossing stated that this wording *"is wording preferred by the Secretary of State"* (para. 82). Given the use of this phrase in the dDCo, article 2(9) is justified because: • A contrary application of the phrase *"materially new or materially different"* would mean that a material or non-material amendment would be required to the DCO to facilitate a work as maintenance or ancillary development or to allow the relevant planning or highway authority to authorise a work in excess of the limits in article 6 where that work gives rise to a materially new or materially different positive environmental effect. This would create significant delay in implementing the DCO and would therefore likely disincentivise contractors from pursuing such works and thereby disincentivise the delivery of the authorised development with better environmental outcomes than assessed. This is contrary to the Secretary of State's interest in delivering infrastructure with minimal adverse environmental effects. • It may undermine relationships with stakeholders and the local community if the Applicant were required to disregard opportunities that emerge through the detailed design of the Project to carry

		out works in a manner with fewer adverse effects or with beneficial effects compared to those assessed in the ES. • The Applicant has undertaken an environmental impact assessment that is precautionary, on the basis of the "Rochdale envelope" (see the Planning Inspectorate's Advice Note 9). This approach means that a worst-case scenario is adopted so that adequate mitigation measures for this scenario are incorporated into the Project. However, should a better scenario transpire in delivering the Project, the "Rochdale envelope" approach should not mean that the Applicant is prevented from capitalising on beneficial environmental effects. It is noted that article 2(7) of the A66 Northern Trans-Pennine Development Consent Order 2024 includes wording closely aligned to that proposed in article 2(9) of the dDCO and that the final drafts for both the London Luton Airport Expansion Development Consent Order (article 2(9)) and A122 (Lower Thames Crossing) Development Consent Order (article 2(10)) contain materially the same provision.
DCO.1.16	The Applicant	**Art. 3 (Development consent etc. granted by Order)** While Art. 3 (1) references the operation of the authorised development should it be qualified through the inclusion of the following sub-paragraph? ‘(3) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required from time to time to authorise the operation of the authorised development.’

		The Applicant does not consider this wording necessary. A DCO only removes the requirement to obtain the consents specified in section 33(1) of the Planning Act 2008. The need for any other consents, including those necessary for the operation of the airport, could only be disapplied by express provision in the DCO, which could only be included with the consent of the relevant consenting body (section 150 of the Planning Act 2008). The Applicant has submitted a **List of Other Consents and Licences** (Doc Ref. 7.5 v2) which acknowledges the other approvals necessary for the construction and operation of the proposed development.
DCO.1.17	The Applicant IPs	**Art. 3 (Development consent etc. granted by Order)** Explain/ justify the inclusion of 'or adjacent' in (2). Paragraph 4.1 of the EM explains why 'within the Order Limits' has not been included – are IPs content with this?
		Article 3(2) is included to ensure that no acts of a local or other nature hinder the construction or operation of the authorised development in accordance with the DCO and to ensure consistency with other legislation more generally. This article must capture enactments applying to land adjacent to the Order limits as such enactments could otherwise potentially hinder the construction or operation of the authorised development – e.g. by restricting access to the site.

		It is noted that the drafting in article 3(2) of the dDCO (including "or adjacent") is well precedented in made DCOs, including article 3(9) of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, article 4(2) of the A66 Northern Trans-Pennine Development Consent Order 2024 and article 3(2) of the Boston Alternative Energy Facility Order 2023.
DCO.1.18	The Applicant	**Art. 4 (Maintenance of authorised development)** Should Art. 4 state that it only authorises the carrying out of maintenance works within the OL? If not, why not?
		This additional wording is not considered to be necessary because article 4 provides that the *"undertaker may at any time maintain the authorised development"* (emphasis added). This phrase is defined as the development and associated development described in Schedule 1 of the dDCO, which is inherently constrained by the Order limits.
DCO.1.19	The Applicant	**Art.6 (Limits of Works)** Version 2 of the dDCO [AS-004] removed Work Nos. 3 and 29 from sub-paragraph (3). The related EM [AS-006] did not reference their removal nor a reason for removing them. Explain. Why does Art. 6 only apply to specific Work Nos.? The EM has changed the title to Limits of works but paragraph 4.7 still says limits of deviation. Update the EM to explain the change.

		The EM (paragraph 4.10) does not provide a reason why this provision is required. Please provide one. What is the difference between Art. 6 (2) and Art. 6 (4)(b)? Include an explanation in the EM.
		a) The references to Work Nos. 3 and 29 were removed from Article 6(3) because no parameters are specified for these works in 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. Parameters for height are not specified for other types of works. Work No. 3 is the conversion of three existing aircraft stands to overnight parking/remote aircraft stands. As per paragraph 5.2.52 of **ES Chapter 5: Project Description** [REP1-016], this entails the installation of fuel hydrants, fixed electric ground power, lighting and stand entry guidance systems. It is not therefore considered necessary to specify parameters for height for this work. 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** [REP1-016], 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 parameters for height for this work. b) Article 6(1) and (2), together, apply to all works comprising the authorised development and control the lateral extent of the works by reference to the **Works Plans** (Doc Ref. 4.5 v4). It is only the height parameters set out in the **Parameter Plans** [AS-131] that are applied to a specific

		subset of works, for the reason given in (a) immediately above. Height parameters are not relevant to all of the listed Work Nos. in Schedule 1. c) References to "limits of deviation" have been amended in version 4.0 of the EM submitted at Deadline 3 (Doc Ref. 2.2). d) Article 6(4)(a) is required to reflect the design uncertainty that is inherent in a third-party infrastructure scheme that remains subject to the approval of the relevant highway authorities. The **Surface Access Highways Plans - Engineering Section Drawings** [APP-021] show the provisional levels for the highway works, but the final detailed design remains subject to finalisation through further discussion with National Highways and the local highway authorities, which is ongoing. It is therefore necessary for a degree of vertical deviation to be permitted in respect of these works by reference to the provisional design shown on the Engineering Section Drawings. This is the purpose of article 6(4)(a). The proposed magnitudes in article 6(4)(a) have been developed with such potential changes in mind and with due consideration of magnitudes of limits of deviation in other made DCOs. The Applicant is in ongoing discussions with National Highways to ensure that they are content with the limits specified. e) While article 6(2) and 6(4)(b) are similar in effect, they have distinct functions and both should be retained. Article 6(2) caveats article 6(1) as regards the highway works to confirm that elements of Work Nos. 35, 36 and 37 need not be strictly constrained to the areas shown for their individual corresponding numbered areas shown on the **Works Plans** (Doc Ref. 4.5 v3) and may instead be contained within the aggregate area of those same works numbers taken as a whole. This is necessary because these works are part of a continuum of highway that is to be constructed. Article 6(4)(b) provides that constructed highway may deviate laterally from the provisional design

		shown on the **Parameter Plans** [AS-131] within the 'Surface Access Works Lateral Limits' shown on those plans. Article 6 in version 6.0 of the dDCO submitted at Deadline 3 (Doc Ref. 2.1) has been amended to ensure that the drafting intention is clear and to update the plans which contain the relevant levels.
DCO.1.20	The Applicant	**Art. 8 (Consent to transfer benefit of Order)** Should sub-paragraph 1 (a) and (b) include 'agreed in writing'? Further justification/ explanation is required in relation to sub-paragraph 8 (4).
		a) This wording has been added in version 6.0 of the **dDCO** submitted at Deadline 3 (Doc Ref. 2.1 v6). b) Article 8(4) provides for the transfer or grant of the benefit of the DCO to a relevant highway authority (in respect of highway works) or a registered company (in respect of the identified office and welfare facilities, new aircraft hangar and hotels) without the subsequent consent of the Secretary of State. This is justified because the Secretary of State will be able to consider the justification for such transfers through the examination and post-examination process, in the same manner as if they were considering a request for consent subsequently. The ability to transfer the benefit of the DCO as regards highway works to a relevant highway authority in article 8(4)(a) is well precedented and is justified on the basis that such authorities will be heavily involved in the carrying out of the highway works forming part of the authorised

		development and will likely be best-placed to exercise the Order powers themselves rather than that requiring the undertaker to do so. The ability to transfer the limited identified works in article 8(4)(b) to a registered company reflects that companies other than the Applicant will likely operate these facilities in due course (as is the case for the equivalent facilities on the Airport today) and will require the benefit of the Order in this regard. The specified works are not mitigation measures for the wider Project and do not have correlative material commitments and thus there is no risk in a third party company exercising the benefit of the Order in respect thereof. It would therefore be unnecessary and disproportionate to require the undertaker to seek further consent from the Secretary of State to such transfers post-grant of the DCO. The Applicant notes that planning permission under the Town and Country Planning Act 1990 is not personal and runs with the land over which it is granted. Given that the works identified in article 8(4)(b) could have been consented under the 1990 Act (or, for some, pursuant to the Applicant's permitted development rights) if not forming part of the wider Project, the ability to transfer the benefit of the Order in respect of these works without further consent is considered appropriate.
DCO.1.21	The Applicant	**Art 9. (Planning permission)** The EM (paragraph 4.24) refers to the Supreme Court's Hillside Parks decision. Have there been any Secretary of State (SoS) decisions on DCOs of relevance since the Hillside Park's judgment or is there any other precedent for this provision?

		Article 9(1), which provides that the development consent granted by the DCO is to be treated as specific planning permission for the purpose of section 264(3) of the Town and Country Planning Act 1990, is well precedented, including in article 9(2) of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, article 46 of the A66 Northern Trans-Pennine Development Consent Order 2024 and article 49 of the A12 Chelmsford to A120 Widening Development Consent Order 2024. The remaining paragraphs of article 9 are bespoke to the dDCO and have been drafted to address potential uncertainty arising from the Supreme Court's decision in *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30, as further explained in the EM. The Applicant has not identified extensive precedent drafting in made DCOs that addresses this uncertainty, though it does note that article 8(2) of the Slough Multifuel Extension Order 2023 provides that *"Anything done by the undertaker in accordance with this Order does not constitute a breach of any planning permission issued pursuant to the 1990 Act"*, though this appears targeted at potential *breaches* of an existing permission rather than incompatibility and resulting inability to continue building out a permission. The Applicant has, however, identified emerging drafting which seeks to tackle the uncertainty and has drawn on this when drafting article 9. The draft DCO for the Lower Thames Crossing project[1], the examination for which has now

[1] Available on the PINS website here: https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010032/TR010032-006305-3.1%20Draft%20Development%20Consent%20Order%20v13.0%20clean.pdf

		concluded, includes bespoke drafting in article 56 to address *Hillside* uncertainty: • Article 56(3) seeks to ensure that planning permission under the 1990 Act can continue to be implemented notwithstanding inconsistency between the permission and/or its conditions and the powers, rights and obligations in the DCO or the authorised development, and that no enforcement action can be taken under the 1990 Act arising from that inconsistency. This paragraph (3) is similar in effect to article 9(3) and (4) of the dDCO. • Article 56(4) seeks to ensure that development constructed or used pursuant to a planning permission granted under the 1990 Act is not a breach of, inconsistent with or able to prevent the authorised development being carried out under the DCO or the exercise of powers or rights thereunder. This paragraph (4) is similar in effect to article 9(2) of the dDCO. The draft DCO for the London Luton Airport Expansion project[2], the examination for which has also concluded, includes similar drafting targeted at *Hillside* uncertainty in article 45. Article 45(3) clarifies that development under the 1990 Act may be carried out or used notwithstanding inconsistency with the DCO and article 45(4) provides that any such inconsistency with a permission granted under the 1990 Act will not constitute a breach of the DCO or prevent the authorised development being carried out pursuant to the DCO. It is noted that the applicant for the Lower Thames Crossing project stated in its explanatory memorandum[3] that its bespoke *Hillside* drafting is *"vital to address matters which relate to the long-term interaction between planning permissions, and the Order…"* (para. 5.254) and that the host

[2] Available on the PINS website here: https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020001/TR020001-003274-2.01%20Draft%20Development%20Consent%20Order.pdf

[3] Available on the PINS website here: https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR020001/TR020001-003140-2.02%20Explanatory%20Memorandum.pdf

		authorities supported the drafting, stating that it *"makes the position clearer for the Council"* and *"is highly desirable".* The Applicant similarly considers that its bespoke drafting, which pursues generally the same aims as that in the Lower Thames Crossing and London Luton Airport draft DCOs, is important to remove uncertainty and risk regarding the interaction between the DCO and other planning permissions (either existing or in the future). There is a degree of precedent for article 9(5) of the dDCO, which confirms that the DCO does not restrict any person from seeking or implementing planning permission for development within the Order limits (including pursuant to permitted development rights). Article 6(2) of the A66 Northern Trans-Pennine Development Consent Order 2024 provides that *"Subject to article 8 (application of the 1991 Act), nothing in this Order is to prejudice the operation of, and the powers and duties of the undertaker under, the 1980 Act, the 1991 Act and the Town and Country Planning (General Permitted Development) (England) Order 2015",* thereby expressly clarifying that the undertaker's permitted development rights were unaffected by the DCO. The M20 Junction 10a Development Consent Order 2017 includes a near-identical provision at article 37.
DCO.1.22	The Applicant RHAs	**Art. 11 (Street works)** Should (1) be modified to include the following after 'as are': 'specified in column (2) of Schedule X (Streets subject to street works) as is within the OL for the relevant site specified in column (1) of Schedule X and may' to be more specific. Similarly:

		(b) Add ‘drill,’ before ‘tunnel’. (c) Add ‘and keep’ after ‘place’. Add (after (1)): (2) Without limiting the scope of the powers conferred by paragraph (1) but subject to the consent of the street authority, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development, enter on so much of any other street whether or not within the Order Limits, for the purposes of carrying out the works set out at paragraph (1) above. EM paragraph 5.9 states that Art. 11 is based on Model Provisions but departs from it in that it authorises interference with any street within the OL, rather than just those specified in a schedule. While paragraph 5.18 provides some explanation, please explain why it is necessary to interfere with any street within the OL.
		a) The Applicant does not consider it necessary for article 11 to reference a schedule setting out a list of streets. There are a small number of streets within the Order limits and, due to the nature of this Project's site, the vast majority are either airport roads or are the subject of the surface access works comprised in the authorised development. Through the examination and by reference to plans including the **Land Plans** [AS-015], stakeholders are able to examine the extent of the Order limits and therefore the extent of streets over which the article 11 power may be exercised. The Applicant is not aware of concerns regarding the exercise of article 11 over specific streets. In that context, preparing and referencing a schedule of all streets within the Order limits would mean that article 11 has the same effect as presently.

		It is noted that the form of wording adopted in article 11 is precedented in several recent roads DCOs but also in article 11 of the Thurrock Flexible Generation Plant Development Consent Order 2022. Such wording is also present in the final draft for the London Luton Airport Expansion Development Consent Order, the examination of which has concluded. **a.** This wording has been added in version 6.0 of the dDCO submitted at Deadline 3. **b.** This wording has been added in version 6.0 of the dDCO submitted at Deadline 3. **c.** In light of (a) above, the Applicant does not consider this wording necessary. **d.** The Applicant refers to the explanation provided in (a).
DCO.1.23	The Applicant RHAs	**Art. 15 (Public Rights of Way-creation, diversion and stopping up)** EM paragraph 5.36 states: "*Schedule 4 Part 2 identifies the single existing public right of way which will be permanently stopped up for which no substitute is to be provided*." Why is no substitute provided?
		The relevant section of Footpath 346_2sy is labelled as Reference B2 on Sheet 1 of the **Rights of Way and Access Plans** [REP1-014]. Whilst no substitute public right of way is to be provided, alternative substitute footway and shared-use cycle track provision is proposed that reflects a rationalised version of the current footpath route as stated in Table 4.1.1 of **ES Appendix 19.8.1: Public Rights of Way Management Strategy** [REP2-009]. The relevant labelled sections of the replacement route on Sheet 1 of the Rights of Way and Access Plans are as follows: c11

		(southwestern section), c8 (eastern section), c40, c6, c5, c4, c3 and c2. These new tracks are listed separately in Part 3 (footways and cycle tracks) of Schedule 4 to the **dDCO** (Doc Ref. 2.1 v6). This approach has been adopted for this section of footpath as it is currently coincident with various rights of way with a highway designation (including Longbridge Way, North Terminal Roundabout, Gatwick Way and Perimeter Road North and the associated footways which form part of the highway). To address this existing issue of overlapping rights of way the footpath is to be stopped up where it is coincident with highways (as is the case elsewhere along the footpaths associated with Sussex Border Path) and substituted by the alternative footway and shared-use cycle track provision.
DCO.1.24	The Applicant RPAs RHAs	**Art. 16 (Access to Works)** Is 'at such locations within the Order Limits as the undertaker reasonably requires for the purposes of the authorised development' precise enough? Should (1) be 'subject to sub-paragraph (2)' and 'with the consent of the street authority (such consent not to be unreasonably withheld or delayed) following consultation by the street authority with the relevant planning authority'? Paragraph 5.43 of the EM cites precedent for this Article. Explain any differences between the precedent cases and the proposed Article.
		a) This wording is considered to be sufficiently precise given that: i. Where the nature and location of an access is known at the present stage of design of the

		Project, this has been included in the descriptions of works in Schedule 1 to the dDCO or as a private means of access listed in Part 2 of Schedule 3. The undertaker is empowered to effect these changes without further consent, given that they will be subject to scrutiny during the examination. Article 16 empowers the undertaker to form and layout further accesses, or improve existing accesses, where the need for this only becomes apparent at a later stage of design of the Project. The location of such accesses can naturally therefore only be described in general terms, as has been done in article 16(1). ii. The location of accesses authorised by article 16 is limited in that they must only be at locations (i) within the Order limits, (ii) as reasonably required by the undertaker (iii) for the purposes of the authorised development. This wording sufficiently constrains the undertaker's exercise of the article 16 power. iii. Any access authorised by article 16 (save for any in respect of airport roads) is subject to the reasonable consent of the street authority (now, as below, in consultation with the relevant planning authority). b) The Applicant has amended article 16 in version 6.0 of the dDCO submitted at Deadline 3 (Doc Ref. 2.1) to incorporate the ExA's suggestion as regards consultation with the relevant planning authority. c) There is a significant degree of variance in the drafting of this article across made DCOs and it is therefore difficult to identify an established form of drafting against which to compare the drafting in article 16. The Applicant notes that article 16 of the dDCO as currently drafted is very similar to article 16 of the recently made HyNet Carbon Dioxide Pipeline Order 2024. To the extent that article 16 of the dDCO takes a different approach from other precedents, this is justified for the

		reasons set out in (a) immediately above.
DCO.1.25	The Applicant EA	**Art. 22 (Discharge of water)** Further justification is required for sub-paragraph (5) namely in relation to the deemed provision. The views of the EA on sub-paragraph (10) are requested.
		Deeming provisions (including that in paragraph (5)) are appropriate and necessary given that the failure of a third-party approving entity to respond to requests for consent in a timely manner can lead to significant delays in a project's construction timetable. Use of deeming provisions in respect of necessary approvals and consents required under the DCO is therefore considered reasonable and in alignment with the objectives of the Planning Act 2008 to ensure efficient delivery of nationally significant infrastructure projects. It is noted that a deeming provision in respect of applications for consent to discharge water into a watercourse is well precedented in made DCOs including article 20(9) of the HyNet Carbon Dioxide Pipeline Order 2024, article 24(6) of the A12 Chelmsford to A120 Widening Development Consent Order 2024 and article 20(6) of the A38 Derby Junctions Development Consent Order 2023. As regards paragraph (10), the Applicant understands from the EA that they do not own any watercourses, public sewers or drains within the Order limits. However, the Applicant's preference would be to retain paragraph (10) to cater for any eventuality where the EA subsequently acquires such a watercourse, public sewer or drain. The purpose of paragraph (10) is simply to avoid the need

		for an additional consent under article 22 of the DCO where the undertaker has already obtained an environmental permit in respect of that discharge of water and therefore the Applicant does not consider there to be any prejudice to the EA or any other entity by its retention in the dDCO. It does not remove the need for the separate environmental permit.
DCO.1.26	The Applicant	**Art. 23 (Protective works to buildings)** Why state 'which may be affected by the authorised development'? Should this relate to any building lying within the OL? The article as drafted would have application beyond the OL. Is that appropriate?
		It is appropriate and necessary that article 23 applies in respect of buildings *"which may be affected by the authorised development"* as these are the buildings which may otherwise suffer impacts from the authorised development if the undertaker cannot exercise its power under article 23 to carry out protective works. Delineating the scope of article 23 in another manner would be imprecise – for example, limiting article 23 to only buildings within the Order limits would prevent the undertaker from carrying out protective works to buildings immediately adjacent to, but outside, the Order limits which may be affected by works being carried out within the Order limits. This would prevent the undertaker from potentially mitigating adverse effects on such buildings. It is noted that the drafting in article 23 of the dDCO is well precedented in made DCOs, including article 25 of the A12 Chelmsford to A120 Widening Development Consent Order 2024, article 21 of the A38 Derby Junctions Development Consent Order 2023 and article 17 of the Manston Airport Development Consent Order 2022.

DCO.1.27	The Applicant	**Art. 25 (Felling or lopping of trees and removal of hedgerows)** In sub-paragraph (1) (b) should there be a reference to persons 'constructing, maintaining or operating' instead of 'using'?
		It is important that paragraph (1)(b) continues to refer to persons *"using"* the authorised development to capture passengers and others who are using the airport or highways comprising the authorised development but who could not be said to be *"constructing, maintaining or operating"* the authorised development. It is necessary and appropriate that article 25 authorises the undertaker to fell, lop or remove a tree, shrub or hedgerow within the Order limits where it poses an imminent danger to passengers and others using the authorised development. It is noted that wording including *"persons using the authorised development"* is well precedented in made DCOs including article 17 of the A66 Northern Trans-Pennine Development Consent Order 2024, article 46 of the A12 Chelmsford to A120 Widening Development Consent Order 2024 and article 34 of the Manston Airport Development Consent Order 2022.
DCO.1.28	The Applicant	**Art 26 (Removal of human remains).** The EM cites the Sizewell C DCO as a precedent. This includes: '(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the

		payment of the costs of the application.' Would this sub-paragraph be applicable in this dDCO? Is there a precedent for sub-paragraph 12? Is it appropriate for the undertaker to make such a judgement without reference to another party?
		a) Near-identical wording to that cited as paragraph (7) in the Sizewell C DCO is already included as article 26(8) in the **dDCO** (Doc Ref. 2.1 v6). b) Paragraph (12) is well precedented in made DCOs, including article 16 of the A66 Northern Trans-Pennine Development Consent Order 2024, article 51 of the A12 Chelmsford to A120 Widening Development Consent Order 2024 and article 16 of the A303 (Amesbury to Berwick Down) Development Consent Order 2023. While there is precedent for paragraph (12) alone (e.g. article 48 of the M42 Junction 6 Development Consent Order 2020 and article 37 of the Southampton to London Pipeline Development Consent Order 2020), other DCOs include wording requiring the undertaker to apply for direction from the Secretary of State as to the subsequent treatment of remains removed under paragraph (12). In light of the ExA's question, the Applicant has added this wording as new paragraph (13) in version 6.0 of the **dDCO** submitted at Deadline 3 (Doc Ref. 2.1 v6).
DCO.1.29	The Applicant	**Art. 31 (Time limit for exercise of authority to acquire land compulsorily)** The EM explains that the 10-year period is required with reference to the complex nature and scale of

		the Proposed Development and cites Thames Tideway Tunnel (TTT) as a precedent. Is this appropriate given that the TTT DCO was based on 10 years beginning with the day on which the Order is made? Please comment on whether the SoS's decision in respect of the Drax Bioenergy with Carbon Capture DCO might have precedence in respect of this matter. The former Model Provisions included the following: '(2) The authority conferred by article 28 (temporary use of land for carrying out the authorised project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.' Is that provision appropriate here?
		a) The Applicant considers that the nature and constituent works of the Project justify a 10-year period. **ES Appendix 5.3.3: Indicative Construction Sequencing** [REP2-016] sets out that the highway works are anticipated to be completed in 2032, with other works not completed until 2035. Allowing a 10-year period within which to exercise compulsory acquisition powers ensures that the Applicant is able to exercise powers proportionately as and when parcels of land are needed for particular works or the operation of the authorised development, rather than having to acquire land earlier on a conservative basis in anticipation of said land being necessary for works later in the construction sequencing or for future operation. Where feasible, the Applicant intends to carry out construction pursuant to temporary possession

		powers, only vesting permanent interests or rights where necessary for construction and otherwise upon works completion, allowing for a more precise scope of land or rights to be permanently acquired. This approach is only feasible if the undertaker retains its compulsory acquisition powers at the time of completion of works, otherwise it will need to pre-emptively acquire rights and land. It is appropriate and necessary for the time period to commence on the "start date" (as defined in the dDCO) due to the increasing prevalence of judicial review challenges by objector groups to high-profile DCOs. The government's policy paper *'Getting Great Britain building again: Speeding up infrastructure delivery'* (2023) notes that *"over half of all legal challenges to NSIP decisions have been brought since 2020"* and that even unsuccessful legal challenges can *"set a project back years in delays"*[4]. It is inappropriate for the period within which the undertaker can exercise compulsory acquisition powers to be reduced (potentially substantially) while legal challenges are finally determined. The rationale for the ten-year period detailed immediately above means that such a reduction in the feasible time period within which to exercise such powers may result in a necessarily more conservative approach to land take. b) The Secretary of State's decision on the Drax Bioenergy with Carbon Capture DCO is noted. There, the applicant sought to extend various time periods (including those in respect of exercising compulsory acquisition powers) from five to seven years to accommodate an anticipated delay to commencement due to a future change to the promoter and operator of a carbon pipeline linked to the project. The ExA accepted the extended time period but the Secretary of State reverted it to five years.

[4] https://www.gov.uk/government/publications/getting-great-britain-building-again-speeding-up-infrastructure-delivery/getting-great-britain-building-again-speeding-up-infrastructure-delivery

		It should be noted that the Secretary of State's Decision Letter states that the Secretary of State did *"not consider that the Applicant has advanced a sufficient reason to justify an increase to [the] time period",* indicating that an extended time period is acceptable where a sufficient reason is provided. As above, the Applicant considers that there is sufficient reason for an extended time period for the Project. c) The wording cited is already included at article 38(2) of the dDCO. This location is considered more appropriate than article 31 given that the wording relates only to exercise of the power in article 37 to use land temporarily for the authorised development.
DCO.1.30	The Applicant	**Art. 32 (Private rights of way)** The EM provides no justification for the inclusion of Article 32(3). Moreover, it is not included in the cited precedent of The Sizewell C (Nuclear Generating Station) Order 2022. Please explain the need for this provision.
		Paragraph (3) is necessary to ensure that the undertaker can temporarily possess land unencumbered, removing impediments to the delivery of the Project that may result from the preservation of persons' rights of way over land that is temporarily possessed pursuant to the DCO. The rights affected by the provision are only temporarily suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and resume once the undertaker has vacated. This wording is well precedented in made DCOs, including article 23 of the A66 Northern Trans-Pennine Development Consent Order 2024, article 28 of the A38 Derby Junctions Development

		Consent Order 2023 and article 24 of the Manston Airport Development Consent Order 2022. The Applicant notes that the bulk of precedent extends to disapplying *"all private rights over land"* whereas the Applicant has consciously adopted the more precise formulation of *"private rights of way".*
DCO.1.31	The Applicant	**Art. 33 (Modification of the 1965 Act)** Sub-paragraph (1) (a) (ii) refers to 'the period of ten years set out in article 31'. Please comment in respect of your answer to DCO.1.29.
		For the reasons set out in (a) and (b) of the Applicant's response to DCO.1.29 above, the Applicant considers that this time period is necessary and appropriate.
DCO.1.32	The Applicant	**Art. 34 (Application of the 1981 Act and modification of the 2017 Regulations)** Further justification is required for sub-paragraphs (5), (6), (11) and (16) to (19) in the EM. In respect of sub-paragraph (8) (b) please reference your answer to DCO.1.29. EM paragraph 7.30 states that the modifications are based in large part on previous development consent orders, including Art. 26 of The Manston Airport Development Consent Order 2022 and Art. 34 of The Sizewell C (Nuclear Generating Station) Order 2022. Art. 34 differs significantly from these cited precedents notably sub-paragraph (5). Please explain the need for the differences.
		Paragraph (6) amends section 5 of the Compulsory Purchase (Vesting Declarations) Act 1981 (the

		"**1981 Act**") to omit language that is not applicable where the 'compulsory purchase order' is a DCO, which is necessary given that article 34(1) applies the 1981 Act as if the DCO were a compulsory purchase order. Paragraph (6) is well precedented, including in article 20(3) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023 and article 21(3) of the Network Rail (Cambridge South Infrastructure Enhancements) Order 2022. The Applicant's intention in including paragraphs (5) and (16) – (19) is to amend the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017 to facilitate the compulsory acquisition of land and rights in favour of a third-party statutory undertaker ("**SU**"). This would allow for acquired land/rights to vest directly in the SU, without the need for the undertaker to acquire the land/rights in its own name and then separately transfer such land/rights to the relevant SU. The need for this approach arises from the fact that the Project encompasses a significant component of surface access works, which will be carried out to a large extent by the relevant highway authorities, including National Highways. Those SUs will need to hold the interests or rights in land required to carry out those elements of the Project. Additionally, utility diversions will be required to facilitate works both on- and off-airport, with a need for utility SUs to hold the necessary land and rights for the utility works and the resulting diverted apparatus. Without provisions that allow for direct vesting of compulsorily acquired land or rights in the SUs, the undertaker (i.e. the Applicant or a successor) would need to acquire the land/rights, register them at HM Land Registry in its own name and then arrange a subsequent transfer to the SUs and a further registration at HM Land Registry in their name. The present significant backlogs at HM Land Registry and the additional procedure involved in the above two-stage process could lead to unintended and undesirable consequences for the construction timetable.

		The Applicant stresses that these provisions do not provide any additional powers of acquisition that could not otherwise be exercised by the undertaker. They simply streamline the administrative process of land ownership or rights holding and registration in a case where land/rights are required to be acquired for works being carried out by third-party SUs. In light of comments from the ExA and local authorities on these provisions, as well as emerging precedent in pending DCO applications, the Applicant is undertaking a review of these provisions to consider any amendments to ensure that the drafting clearly reflects its intention and to address concerns raised. The Applicant will provide an update at a future deadline.
DCO.1.33	The Applicant	**Art. 35 (Acquisition of subsoil or airspace only)** Should sub-paragraph (1) also refer to Art. 28 (compulsory acquisition of rights and imposition of restrictive covenants)?
		This wording is considered to be unnecessary on the basis that it would be duplicative. The existing reference in article 35(1) to *"the land referred to in paragraph (1) of article 27"* encompasses the land referred to in article 28 because both articles 27(1) and 28(1) refer to *"the Order land"* and reference the purposes for which land may be acquired under article 27(1). This approach to the wording of this article is well precedented in made DCOs, including article 27 of the A66 Northern Trans-Pennine Development Consent Order 2024, article 38 of the A12 Chelmsford to A120 Widening Development Consent Order 2024 and article 31 of the A38 Derby Junctions Development Consent Order 2023.

DCO.1.34	The Applicant	**Art.38 (Time limit for exercise of authority to temporarily use land for carrying out the authorised development)** In respect of sub-paragraph (1) please reference your answer to DCO.1.29.
		For the reasons set out in (a) and (b) of the Applicant's response to DCO.1.29 above, the Applicant considers that this time period is necessary and appropriate.
DCO.1.35	The Applicant	**Art. 39 (Temporary use of land for maintaining the authorised development)** Explain why, in sub-paragraph (13) the maintenance period is 5 years.
		The time period in paragraph (13) is distinct from that discussed in (a) and (b) of the Applicant's response to DCO.1.29 above because it starts, for each part of the authorised development, on the date that part is first opened for public use or is first brought into operational use by the undertaker (as relevant). A five-year time period from that point in this context strikes a fair balance between affording the undertaker sufficient time to carry out necessary maintenance to parts of the authorised development in the years immediately following their completion and not unduly burdening the Order land. Allowing the temporary use of land for maintenance in this manner is justified as it imposes a lesser burden on the Order land than if the power were not available to the undertaker and the undertaker had to permanently acquire an interest or right over the relevant land to achieve the same purpose. Article 39 is well precedented, including in article 30 of the A66 Northern Trans-Pennine Development

		Consent Order 2024, article 30 of the A303 (Amesbury to Berwick Down) Development Consent Order 2023 and article 30 of the Manston Airport Development Consent Order 2022.
DCO.1.36	The Applicant	**Art. 40 (Special category land)** If not defined in Art. 2, should special category land be defined in sub-paragraph (5) with reference to land plans?
		Please see the Applicant's response to DCO.1.11 above.
DCO.1.37	The Applicant	**Art. 49 (Defence to proceedings in respect of statutory nuisance)** Justify the inclusion of nuisances within sub-paragraphs (c), (d), (e), (fb), (g), (ga) and (h) of s79. Paragraph 8.10 of the EM states that sub-paragraph (2) of Art. 48 provides that compliance with the controls and measures described in the CoCP will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably have been avoided. This sub-paragraph does not occur in the cited Sizewell C (Nuclear Generating Station) Order 2022. Explain why it is necessary here.
		a) This article must be viewed in the context that section 158 of the Planning Act 2008 provides a general statutory authority for carrying out development or anything else authorised by a DCO, which serves as a defence in civil or criminal proceedings for nuisance. This general defence is expressly subject to any contrary provision made in a particular DCO (section 158(3) of the 2008 Act) and article 49 therefore caveats and details how the general defence applies in respect of the cited types of nuisance. Section 152 of the Planning Act 2008 provides for compensation to

		persons whose land is injuriously affected by the carrying out of works, where a defence of statutory authority in civil or criminal proceedings for nuisance is available by virtue of section 158 and article 49. Article 49 makes clear that an order cannot be made on the basis of one of the cited types of statutory nuisance where the alleged nuisance is (i) attributable to the carrying out of the authorised development in accordance with the construction noise controls in the Control of Pollution Act 1974 ("**CoPA**") or (ii) is a consequence of the authorised development that cannot be reasonably avoided. It is appropriate that an undertaker should not face a finding of statutory nuisance for carrying out development scrutinised through the examination process and consented by order of the Secretary of State in the above circumstances. Article 49 imposes a high standard on the undertaker – notably higher than section 158 of the 2008 Act itself – by referring to the CoPA processes and specifying that the nuisance must not have been reasonably avoidable. This strikes a fair balance. The Applicant's approach in including an article regarding proceedings for statutory nuisance is well precedented and the precise selection of types of nuisance is precedented in article 38 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016. In any event, the Applicant notes that many of the cited types of nuisance in the Environmental Protection Act 1990 (the "**EPA**") are likely to be of limited utility against the Applicant: • subsection (c) (fumes or gases emitted from premises so as to be prejudicial to health or a nuisance) does not apply to premises other than private dwellings (section 79(4) of the EPA);

		• subsection (fb) (artificial light emitted from premises so as to be prejudicial to health or a nuisance) does not apply to artificial light emitted from an airport (section 79(5B)(a) of the EPA); • subsection (g) (noise emitted from premises so as to be prejudicial to health or a nuisance) does not apply to noise caused by aircraft (section 79(6) of the EPA); and • subsection (ga) (noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street) does not apply to noise made by traffic (section 79(6A)(a) of the EPA). Further, to the extent that categories of nuisance would be applicable, these were considered in the Applicant's **Statement of Statutory Nuisance** [APP-265], which concluded that, taking into account the mitigation measures and controls set out in the Applicant's ES, *"none of the matters of statutory nuisance addressed by the Act are predicted to arise"*. The Applicant is therefore unlikely to need to rely upon article 49, but it is appropriate and necessary (for the reasons immediately above) that it is available if required. b) Paragraph (2) confirms that compliance with the controls and measures described in the Code of Construction Practice (and therefore its subsidiary management plans) will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided. This provision is necessary to clarify the scope of the defence of statutory authority arising from the grant of the DCO. The Code of Construction Practice will reflect the set of appropriate measures and controls endorsed by the Secretary of State (if consent is granted). It is not reasonable or appropriate for a claim of statutory nuisance to succeed in respect of activity by the undertaker in compliance with

		such measures. Paragraph (2) is precedented in article 43 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and article 44(2) of the Boston Alternative Energy Facility Order 2023.
DCO.1.38	The Applicant	**Art. 53 (Service of notices)** Would it be appropriate to include the following sub-paragraph after (1): 'If an electronic communication is received outside the recipient's business hours, it is to be taken to have been received on the next working day.'
		The Applicant considers that a reference to *"the recipient's business hours"* may introduce undue uncertainty as to the date on which a notice is deemed to be received, given that entities on which notices may be served pursuant to the DCO may have widely varying business hours which in many cases may not be readily ascertainable by the undertaker. However, the Applicant has added new paragraph (9) to article 53 which provides that *"Where a notice or document is sent by electronic transmission after 5:00pm, it is deemed served on the next working day"* to seek to address the principle understood to be underlying the ExA's question.
DCO.1.39	The Applicant	**Schedule 1 (authorised development)** While the questions about Schedule 1 are primarily directed at the Applicant, the ExA would welcome

	CBC	the views of CBC as the RPA for the majority of the works. **Work No. 1** Does 'reposition … 12 metres (m) to the north' adequately describe the new location? Do the Works Plans [AS-129] provide adequate detail to show the new position? Should 'northern runway' be defined? **Work No. 2** Should 'main runway' be defined? Note that R1(1) "*commencement of dual runway operations*" uses the term 'southern runway'. **Work No. 3** Which three existing stands does this refer to? **Work No. 4** Do the taxiways need defining/ certifying on a plan? Similarly, should clarification be provided in respect of the location of substation BJ, pumping station 7a, which stand is (c) (iii), Hangar 7 etc? Alternatively/ additionally, why are letters not used on Works Plans as for Work No. 22? Work No. 4 occurs in multiple places on the Works Plans resulting in a lack of clarity. Please review the numbering on the Works Plans. **Work No. 5** 'Including' is not exclusive. Should this be tightened eg comprising? ('Including' is used in many Work Nos.)

		The descriptions at (a) to (g) are very broad and not specified in terms of locations on Works Plans. Should the descriptions be more specific and/ or highlighted individually on the Works Plans. **Work No. 6** As for Work No. 5. **Work No. 7** As for Work No. 5. **Work No. 8** As for Work No. 5. The Works Plans show Work Nos. 7 and 8 combined. Why? Why can the proposals not be more locationally specific? **Work No. 9** As for Work No. 5. **Work No. 10** As for Work No. 5. **Work No. 11** As for Work No. 5. **Work No. 12** As for Work No. 5. The Works Plans show Work Nos. 11 and 12 combined. Why? Why can the proposals not be more locationally specific?

		Work No. 14 As for Work No. 5. **Work No. 18** 'Reconfigure' is vague. Within what parameters? **Work No. 20** 'Relocate' is vague. What happens to the original? **Work No. 22** Highlight (a) to (g) individually on the Works Plans. **Work No. 23** Highlight (a) to (d) individually on the Works Plans **Work No. 26** Within what parameters? **Work No. 27** Within what parameters? **Work No. 28** Within what parameters? Highlight (a) to (e) individually on the Works Plans. There are a range of developments within this work. How would the site be configured in terms of heights for individual developments and what proportion of the work would be taken up by each individual building type?

		Work No. 31 Within what parameters? Highlight (a) to (f) individually on the Works Plans. **Work No. 32** Within what parameters? **Work No. 33** Should the number of parking spaces be specified? **Work No. 38** Should more detail for individual elements be provided at this stage? **Work No. 39** Should more detail for individual elements be provided at this stage? Specify the locations of Ponds A and M. **Work No. 40** Should more detail for individual elements be provided at this stage? Should (b) specify 'no less than'? **Work No. 41** Should more detail for individual elements be provided at this stage? **Work No. 42** Should more detail for individual elements be provided at this stage? **Work No. 43**

		Should more detail for individual elements be provided at this stage? **Ancillary or Related Development** How would (p) work in conjunction with Art. 25 to ensure that felling as only undertaken where necessary? Is there duplication between elements within (e) and within (q)? **Order Limits** Why are the OL, particularly on Sheets 4 and 7, drawn so broadly when the work areas on these sheets are so small by comparison?
		The response to this question should be read alongside the response to DCO.1.57 and the accompanying updates made to the **Design Principles** (Doc Ref. 7.3 v3) submitted at Deadline 3. The response to DCO.1.39 is set out below, taking each matter in turn. Work No. 1 – ○ The description to "reposition" the northern runway is considered appropriate and accurate. As shown in Appendix B (Indicative Cross-Sections of the Northern Runway) in **The Applicant's Response to ISH1 Actions** [REP1-062], the extent of additional 'runway' width to be built (including the removal of the existing northern shoulder) is 12m wide, with the existing runway centreline then moved 12m north. Taking account of the existing northern shoulder, a total width of 12m of new hardstanding is to be built to the north of the existing northern runway. ○ The level of detail shown for Work No. 1 on the **Works Plans** (Doc Ref. 4.5 v4) has been prepared in compliance with Regulation 5(2)(j) of The Infrastructure Planning

		(Applications: Prescribed Forms and Procedure) Regulations 2009 by showing the proposed location of Work No. 1 (part j(i)) and the limits within which the works may be carried out (part j(ii)). ○ The **dDCO** (Doc Ref. 2.1 v6) submitted at Deadline 3 has been amended to include a definition of the "existing northern runway" and "repositioned northern runway". Work No. 2 – The **dDCO** (Doc Ref 2.1 v6) has been amended to include a definition of the main runway. The use of the term 'southern runway' in the **dDCO** has also been replaced with 'main runway' for consistency. Work No. 3 – The location of the three existing aircraft stands to be converted under Work No. 3 are shown on **Figure 4.2.1a** of the **ES Existing Site Figures** [REP1-019], located to the west of Pier 3 and east of Pier 6. These stands are within the area for Work No. 3 shown on **Works Plans – Sheet 3** (Doc Ref. 4.5 v4). Work No. 4 – ○ The location of the taxiways is defined on the **Works Plans** (Doc Ref. 4.5 v4), made clear by the 'Work No. 4' labels. Notwithstanding this, the **Works Plans** (Doc Ref. 4.5 v4) have been updated at Deadline 3 to distinguish between the location of each individual element under Work No. 4, e.g. (a), (b), (c), etc. Additional detail on the terms used to describe each taxiway is shown on the **ES Existing Site Figures – Figure 4.2.1a** [REP1-019] and the **ES Project Description Figures – Figure 5.2.1a** [AS-135].

		○ The location of substation BJ, pumping station 7a, stand under part (iii) and the new stand north-east of Hangar 7 are encompassed within the 'Work No. 4' labels on the **Works Plans** (Doc Ref. 4.5 v4). The locations are also labelled on the **ES Project Description Figures** [AS-135], namely Figure 5.2.1a, Figure 5.2.1e and Figure 5.2.1h. As above, the **Works Plans** (Doc Ref. 4.5 v4) have also been updated to distinguish between the location of each individual element under Work No. 4 for clarity, including these items under (i) to (iv). Work No. 5 – The use of the word "including" is common across DCOs in describing the authorised development. By way of example, the term is used in the respective Schedule 1 of The Sizewell C (Nuclear Generating Station) Order 2022, The HyNet Carbon Dioxide Pipeline Order 2024 and the A12 Chelmsford to A210 Widening DCO 2024. The word "including" enables any works that would be required to facilitate the delivery of the Work No. to come forward, where necessary, in line with the detailed design to be approved or consulted upon under Requirement 4 of the **dDCO** (Doc Ref. 2.1 v6). Work Nos. 5 to 7, 9 to 11, 14, 22, 23, 31 – The **Works Plans** (Doc Ref. 4.5 v4) have been updated to distinguish the location of each individual element of the Work No., e.g. (a), (b), (c), etc., where the individual elements relate to different works areas. In the majority of cases, the relevant Work No. relates to only one work area and therefore are not required to be distinguished further by sub-letters. Work No. 8 – Work Nos. 7 and 8 are combined on the **Works Plans – Sheets 1 and 5** (Doc Ref. 4.5 v4) as relating to the same location, i.e. are locationally specific. Work No. 8 relates to the removal of the airside support facilities currently located in this area, as shown on **ES**

		Figure 4.2.1a [REP1-019], to enable to the construction of the Oscar Area under Work No. 7 and as shown on **ES Figure 5.2.1a** [AS-135]. Work No. 12 – The location of Works Nos. 11 and 12 are shown combined on the **Works Plans – Sheet 6** (Doc Ref. 4.5 v4) as these facilities may be located together, to be informed by the detailed design process. For example, the facilities are located together on **ES Figure 5.2.1a** [AS-135]. Work No. 18 – The dDCO was updated at Procedural Deadline A [PDLA-004 and PDLA-005] to replace the term 'reconfigure' with 'remove and replace'. Work No. 20 – The dDCO was updated at Procedural Deadline A [PDLA-004 and PDLA-005] to replace the term 'relocate' with 'realign'. Further detail on the proposed alignment of Larkins Road is provided in the **Project Description Signposting Document** [AS-137] and paragraphs 5.2.96 to 5.2.97 of **ES Chapter 5: Project Description** [REP1-016], and shown on **ES Figure 5.2.1d** [AS-135]. Work No. 26 – The parameters for Work No. 26 are shown on the **Parameters Plan – Work No. 26** [AS-131], which is secured under Article 6(3) of the **dDCO** (Doc Ref. 2.1 v6). Work No. 27 – The parameters for Work No. 27 are shown on the **Parameters Plan – Work No. 27** [AS-131], which is secured under Article 6(3) of the **dDCO** (Doc Ref. 2.1 v6). Work No. 28 –

		○ The parameters for Work No. 28 are shown on the **Parameters Plan – Work No. 28** [AS-131], which is secured under Article 6(3) of the **dDCO** (Doc Ref. 2.1 v6). ○ The **Design Principles** (Doc Ref. 7.3 v3) have been updated in response to DCO.1.57 and include a new site-specific design principle under DBF36 to inform the design and layout of the Car Park H site. Work No. 31 – The parameters for Work No. 31 are shown on the **Parameters Plan – Work No. 31** [AS-131], which is secured under Article 6(3) of the **dDCO** (Doc Ref. 2.1 v6). Work No. 32 – The parameters for Work No. 32 are shown on the **Parameters Plan – Work No. 32** [AS-131]. The **dDCO** (Doc Ref. 2.1 v6) has been amended at Deadline to ensure the vertical parameters for Work No. 32 are secured under Article 6(3) of the **dDCO**. Work No. 33 – A response on the quantum of car parking and its delivery is provided against TT.1.40 (Doc Ref. 10.16). In short, it is not considered appropriate to specify the number of parking spaces at an individual car park (either minimum, maximum or a specific number) given that GAL only undertakes to provide as much on-airport parking capacity as is required, with due reference to mode shares and demand. Work No. 38 – Further design details on the Museum Field environmental mitigation area is contained in the site-specific design principles in the **Design Principles** (Doc Ref. 7.3 v3), namely DLP8 to DLP11, and secured under Requirement 4 of the **dDCO** (Doc Ref. 2.1 v6). In addition, site-specific landscape principles for the Museum Field environmental mitigation area are contained in para 4.4.3 of the **Outline LEMP** [REP2-021] alongside a sketch landscape

		concept plan in Figure 1.2.1, to be detailed in future LEMP(s) in accordance with Requirement 8 of the **dDCO**. Work No. 39 – ○ Further design details on the River Mole diversion area are contained in the **Design Principles** (Doc Ref. 7.3 v3), namely DLP15, DLP16, DDP10, DDP15 and DDP17, and secured under Requirement 4 of the **dDCO** (Doc Ref. 2.1 v6). Site-specific landscape principles for works in or around the River Mole in Landscape Zone 3, covering Work No. 39, are included in para 4.4.2 of the **Outline LEMP** [REP2-021], to be detailed in future LEMP(s) in accordance with Requirement 8 of the **dDCO**. ○ The locations of Ponds A and M are shown on **ES Figures 5.2.1e and 5.2.1h** [AS-135]. Work No. 40 – ○ Further design details on the Longbridge Roundabout (Church Meadows) replacement open space area are contained in the **Design Principles** (Doc Ref. 7.3 v3), namely DLP1, DLP2, DLP3, DLP4 and DLP6, and secured under Requirement 4 of the **dDCO** (Doc Ref. 2.1 v6). In addition, site-specific landscape principles for the Longbridge Roundabout replacement open space are included in para 4.7.4 of the **Outline LEMP** [REP2-021] alongside a sketch landscape concept plan in Figure 1.2.3, to be detailed in future LEMP(s) in accordance with Requirement 8 of the **dDCO**.

		○ Work No. 40(b) in the **dDCO** (Doc Ref. 2.1 v6) has been amended to specify that *"no less than"* 0.52ha of planting shall be provided. Work No. 41 – The description of Work No. 41 has been updated in the **dDCO** (Doc Ref. 2.1 v6) to provide further design details, in line with the **Project Description Signposting Document** [AS-137] and **ES Chapter 5: Project Description** [REP1-016]. In addition, the design principles have been updated in response to DCO.1.57 and include a new site-specific principle for Work No. 41 under DLP17. Furthermore, site-specific landscape principles for the Pentagon Field ecological area are included in para 4.9.2 of the **Outline LEMP** [REP2-021] alongside a sketch landscape concept plan in Figure 1.2.18, to be detailed in future LEMP(s) in accordance with Requirement 8. Work No. 43 – Further design details on the water treatment works is contained in the site-specific design principle DDP14 in the **Design Principles** (Doc Ref.7.3) and secured under Requirement 4 of the **dDCO** (Doc Ref. 2.1 v6). In addition, site-specific landscape principles for the water treatment works are contained in para 4.9.1 of the **Outline LEMP** [REP2-021] alongside a sketch landscape concept plans in Figures 1.2.19 and 1.2.20, to be detailed in future LEMP(s) in accordance with Requirement 8 of the **dDCO**. The authority provided by the DCO for the felling of trees and hedgerows as a form of development is by the inclusion of this activity in Schedule 1 and therefore as part of the *"authorised development"* as defined in the DCO. However, the carrying out of the authorised development must be undertaken in accordance with the articles and requirements of the DCO, including article 25. Therefore, article 25 governs any felling, lopping or removal of trees, shrubs or hedgerows.

		While the items in paragraphs (e) and (q) of 'Ancillary or Related Development' appear similar, they are in the different contexts of "site construction compounds" (q) and the broader "permanent and temporary hard-standing areas" (c). It is therefore appropriate to retain both. Order Limits – The Applicant considers that Sheets 4 and 7 of the **Works Plans** (Doc Ref. 4.5 v4) have been drawn to an appropriate scale, with the works area spanning the width of Sheet 4. The area of Work No. 43 on Sheet 7 has also increase in size owing to the accepted Project Change 3.
DCO.1.40 (R1)	The Applicant RPAs RHAs	**Schedule 2 (Requirements)** **R1 - Interpretation** "*commencement of dual runway operations*": Where is the control to ensure that the northern runway is only used for departures and not arrivals? Similarly, where is the control to ensure that the northern runway is only used for aircraft up to Code C size? Sub-paragraph (2) of R1 does not appear to relate to the description of paragraph (2) in paragraph 9.5 of the EM. Additionally, it does not appear that paragraph (2) has been used in the cited cases. Please respond.
		a) The Project has been designed on the basis that the repositioned northern runway will not be routinely used for arriving aircraft and there are operational requirements why that would not be

		feasible, including that the northern runway is currently and will remain with the Project a non-instrument runway (where a pilot is reliant on visual cues to make a safe approach and landing). However, in light of comments from the ExA and local authorities, the Applicant has proposed to secure this operational restriction by requirement and has amended requirement 19 in version 6.0 of the **dDCO** submitted at Deadline 3 (Doc Ref. 2.1 v6) to do so. b) As regards routine use of the northern runway by Code C aircraft only, this is how the airport with the Project is envisaged to operate and it is acknowledged that this assumption fed into **ES Appendix 14.9.2: Air Noise Modelling** [APP-172]. The Applicant is therefore content to provide further comfort to the ExA by also securing this in the amended requirement 19 in version 6.0 of the **dDCO** submitted at Deadline 3 (Doc Ref. 2.1 v6). In respect of both of the above new components of requirement 19, the Applicant notes that developments in technology and best practice over time may mean that these operational restrictions should be reviewed. To cater for such a process of review in the most proportionate manner, new requirement 19(4) allows either of the above restrictions to be disapplied or substituted as agreed in writing by the Secretary of State, who must consult the CAA and Crawley Borough Council. This mechanism ensures that the Secretary of State, the expert aviation body CAA and the lead local authority are involved in any decision to amend these restrictions, should circumstances merit such an alteration, which would need to be sufficiently justified to the Secretary of State. c) The reference to "Paragraph (2)" in paragraph 9.5 of the EM is to paragraph 2 of Schedule 2 – i.e. the paragraph headed *"Anticipatory steps towards compliance with any requirement"*. Sub-paragraph 1(2), (beginning *"References in this Schedule to part of the authorised development…"*)

		is not referenced in the EM. This provision is included to clarify that requirements referring to a "part" of the authorised development mean individual *"stages, phases or elements of the authorised development"* in respect of which an application is made under Schedule 2. This reflects the fact that the undertaker will seek to discharge requirements in respect of components of the authorised development as it progresses through the construction timetable – e.g. a landscape and ecology management plan will be submitted under Requirement 8 prior to commencement of each part of the authorised development and will detail the landscaping proposals *for that part.* The wording of sub-paragraph 1(2) is precedented in Schedule 2 of the Boston Alternative Energy Facility Order 2023.
DCO.1.40 (R2)	The Applicant RPAs RHAs	**R2 - Anticipatory steps towards compliance with any requirement** The justification for this Requirement (EM paragraph 9.5) appears to have been provided in relation to paragraph (2) instead of Requirement 2. Please clarify.
		Paragraph 2 of Schedule 2 is not a requirement but a provision clarifying how actions taken before the coming into force of the DCO should be treated for the purpose of compliance with the DCO. It is therefore described as "Paragraph 2" in the EM. The requirements commence from paragraph 3 of Schedule 2 and to maintain consistency with the numbering of the paragraphs the requirement at paragraph 3 of Schedule 2 is described as Requirement 3. Version 4.0 of the EM submitted at Deadline 3 has been amended to clarify the provisions to which

		paragraph 9.5 of the EM relates.
DCO.1.40 (R3)	The Applicant RPAs RHAs	**R3 – Time limit and notifications** Why should the serving of notice occur once the dual runway operation has commenced and not before?
		The requirements drafted by reference to the commencement of dual runway operations (Requirements 6(3), 15(1), 16(4), 17, 18(4), 18(6), 19(1) and 20) all have effect "from" or "following" (or equivalent) that date or require actions to have been taken by a certain anniversary of the commencement of dual runway operations. It is therefore considered most useful for the purposes of monitoring compliance with these requirements for the undertaker to notify CBC of the actual date on which commencement of dual runway operations occurred. This notwithstanding, in light of the ExA's comment, Requirement 3(2) in version 6.0 of the **dDCO** submitted at Deadline 3 (Doc Ref. 2.1 V6) has been amended to also require notification of CBC at least 30 working days prior to the anticipated date of commencement of dual runway operations.
DCO.1.40 (R4)	The Applicant RPAs RHAs	**R4 – Detailed design** Is ”u*nless otherwise agreed in writing with CBC…”* at the end of (2) and (3) a tailpiece? (4) How would consultation with CBC operate? What is the timescale, procedure and what would happen if CBC provided comments which the undertaker did not agree with? Would the Schedule 11 procedures need to be amended? The term ‘discharging authority’ does not appear to encompass

		this situation. (5) Add ‘in writing’ after ‘agreed’.
		a) Use of this wording is necessary and justified given the level of design detail available at the consenting stage of the Project. Allowing for minor departures from certain certified documents (e.g. the Design Principles in Requirement 4(2)(a)) reflects that it is beneficial to draft such documents in a clear and straightforward manner. In limited circumstances strict compliance with such documents may not be possible or it may be desirable to submit details or carry out works in a different manner (e.g. to reflect advances in technology or best practice) to reduce environmental effects. The use of the cited wording allows the discharging authority to oversee and approve any such minor changes in approach, allowing the authorised development to be carried out in a manner that minimises environmental effects. Where the cited wording allows the discharging authority to approve departures from details previously submitted to them for approval (e.g. Requirement 4(3)), this is for administrative ease to ensure that the undertaker can seek and obtain approval for minor changes in approach in the above circumstances without needing to submit the full set of details for re-discharging of the relevant requirement. To ensure that the drafting clearly reflects this rationale, the Applicant has amended Requirement 4 in version 6.0 of the dDCO submitted at Deadline 3 (Doc Ref. 2.1) to clarify where departures from certified documents are appropriate and has added a new paragraph 1(3) in Schedule 2 to the dDCO to make express that a discharging authority can only agree details pursuant to an *"unless otherwise agreed"* provision if it is satisfied that so doing does not give rise to any

		materially new or materially different environmental effects to those assessed in the ES. This ensures that a discharging authority cannot authorise a change that goes beyond the scope of the Project as assessed in the Applicant's ES and scrutinised during the examination. b) The requirement for the undertaker to consult CBC on excepted development in Requirement 4(4) mirrors the existing obligation on the Applicant as an airport operator to consult the local planning authority before carrying out development pursuant to its permitted development rights in Class F of Part 8 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the "**2015 Regulations**"). The Applicant carries out such consultation frequently in exercising its permitted development rights and the process is therefore well-known to both the Applicant and CBC. However, to ensure maximum clarity, the Applicant has amended Requirements 4 and 10 in version 6.0 of the dDCO submitted at Deadline 3 to clarify that the same process should be followed under Requirement 4(4) as under the 2015 Regulations. c) This wording has been added in version 6.0 of the **dDCO** submitted at Deadline 3 (Doc Ref. 2.1 v6).
DCO.1.40 (R5)	The Applicant RPAs RHAs	**R5 - Local highway works – detailed design** Is "*unless otherwise agreed in writing with the relevant planning authority"* at the end of (3) a tailpiece?
		Please see the Applicant's response in respect of Requirement 4 above. Similar amendments have

		been made to Requirement 5 in version 6.0 of the **dDCO** submitted at Deadline 3 (Doc Ref. 2.1 v6).
DCO.1.40 (R6)	The Applicant RPAs RHAs	**R6 – National highway works** In paragraph (2) is 'the third anniversary of the commencement of dual runway operations' an appropriate timescale?
		The delivery milestone for the "national highway works" as such term is defined in Article 2 and secured by Requirement 6 of the dDCO is informed by the modelling undertaken in support of the Application. In particular, such modelling assumes that dual runway operations commence in assessment year 2029 and that national highway works are operational by assessment year 2032. These assumptions have accordingly been reflected in the drafting of the requirement and specifically the need for the works to be in place by the third anniversary of the commencement of dual runway operations (to mirror, in non-date form, the temporal period between assessment years 2029 and 2032). The **Transport Assessment** [AS-079] presents the result of VISSIM modelling for the future baseline and with Project scenarios for the assessment years 2032 and 2047. VISSIM model sensitivity tests have now also been undertaken for the equivalent 2032 and 2047 scenarios for the post-Covid assumptions, drawing on the strategic model sensitivity tests reported in **Accounting for Covid-19 in Transport Modelling** [AS-121]. The VISSIM sensitivity tests are reported in **Post-Covid VISSIM Sensitivity Tests for 2032 and 2047** (Doc Ref. 10.19) which is being submitted at Deadline 3. They show that in the vicinity of the Airport, the operation of the highway network in the post-Covid sensitivity tests (in both the future baseline and with Project scenarios) is better than that in the core

		modelling which supported the Application, which confirms the conservative nature of the core modelling in providing a reasonable worst-case assessment. The Applicant is preparing further VISSIM modelling to illustrate the operation of the network in 2029, prior to the proposed completion date of the national highway works. The Applicant will prepare a technical note to report on these findings from the "core" and post-Covid 19 sensitivity model tests, which together with the VISSIM modelling for 2032 will form part of further engagement with National Highways on the delivery milestone for the national highway works, as secured pursuant to Requirement 6 of the draft DCO. The Applicant will update the ExA on the output of these discussions at the earliest opportunity, indicatively expected to be at Deadline 5. By way of general overview, the modelling indicates that the additional traffic generated by the Project after the commencement of dual runway operations in assessment year 2029 and the implementation of the interventions set out in ES Appendix 5.4.1: Surface Access Commitments [APP-090] would lead to a slightly worse network performance compared to the equivalent future baseline scenario, but not to the extent that the national highway works would be necessary at that point. The highway works are, however, shown to be desirable by assessment year 2032 to address congestion on the road network in the vicinity of the Airport that would otherwise lead to adverse network impacts in future years. In this way, the Project national highway works would deliver benefits to the performance of the network for both airport-related and non-airport traffic and would result in levels of performance which would be better overall than in the equivalent future baseline situation.
DCO.1.40	The	**R7 – Code of construction practice**

(R7)	Applicant RPAs RHAs	Is ‘unless otherwise agreed with CBC’ a tailpiece? If acceptable, insert ‘in writing’ after ‘agreed’.
		Please see the Applicant's response in respect of Requirement 4 above. The additional wording has been added.
DCO.1.40 (R8)	The Applicant RPAs RHAs	**R8 – Landscape and ecology management plan** How would this requirement operate where potentially the Landscape and Ecology Management Plan (LEMP) did not included land where CBC was the RPA? R8 provides for a LEMP to be submitted for ‘any part of the authorised development’. It is not clear how many LEMPs are likely to be produced. Explain what is meant by ‘part of the development’? Does it relate to the zones 1-8 of the development or does it relate to sequence in which the construction will take place? If the latter, will construction impacts be covered by a LEMP in addition to the CoCP?
		a) The Applicant does not anticipate that any LEMP will be submitted that relates solely to land outside of CBC's administrative boundary given the minimal amount of Order land where this is the case. In any event, Requirement 8(1) provides that CBC must consult the other borough/district councils to the extent that they are the relevant planning authority for any land to which the LEMP relates, which would afford any affected councils adequate opportunity to provide

		input on the submitted LEMP. b) The number of LEMPs that are to be submitted during the construction timetable is not known at this stage of design of the Project. However, the scope of works to which a submitted LEMP applies will be made clear by the undertaker at the time of submission to CBC pursuant to Requirement 8. c) The meaning of a *"part of the authorised development"* is set out in paragraph 1(2) of Schedule 2 and means *"stages, phases or elements of the authorised development in respect of which an application is made by the undertaker".* It relates to the sequence in which construction will take place (and not the Outline LEMP's landscape zones), in that the undertaker will make submissions pursuant to the relevant requirements in respect of a package of works prior to these being commenced. The scale of a *"part of the authorised development"* will vary depending on the grouping of related works – both geographically and temporally – but, as above, the undertaker will make clear the scope of works to which any submissions relate at the time of submission. The LEMPs will be prepared in substantial accordance with the **Outline LEMP** [REP2-021] and its landscape principles, which in some instances, may mean that more than one Landscape Zone is applicable to an individual LEMP. d) The **Outline LEMP** [REP2-021], and therefore the LEMPs, relate to the design and delivery of the detailed landscape and ecology proposals, together with the long-term maintenance principles and management responsibilities. The production of the LEMPs will be informed by further survey work and management plans secured through the **Code of Construction Practice** (CoCP) [REP1-021]. For instance, the additional ecological surveys to be undertaken to support any protected species licenses and the detailed arboricultural measures (including the Tree Removal

		and Protection Plans) described in the CoCP.
DCO.1.40 (R9)	The Applicant RPAs RHAs	**R9 – Contaminated land and groundwater** In sub-paragraph (1) how would low risk be determined?
		This will be through review of desk study information in the first instance together with details of the proposed development. Risk would be determined through assessing the presence of any potential source-pathway-receptor linkage with a qualitative risk rating applied where a linkage is identified as potentially active. Where the risk is considered to be potentially greater than low at this stage a ground investigation will be undertaken with appropriate sampling and assessment. The risk ratings applied as part of the desk study will be subject to approval by the LPA as secured by DCO Requirement 9. It is worth noting that regardless of assessed risk and any determined requirement for remediation the construction phase will be subject to a discovery strategy which will deal with any unexpected contamination.
DCO.1.40 (R10)	The Applicant RPAs RHAs	**R10 – Surface and foul water drainage** In sub-paragraph (3) is ‘unless otherwise agreed in writing by the lead local flood authority’ a tailpiece?
		Please see the Applicant's response in respect of Requirement 4 above.

DCO.1.40 (R14)	The Applicant RPAs	**R14 – Archaeological remains** Is 'unless otherwise agreed in writing…' in paragraphs (1) and (2) a tailpiece?
	RHAs	Please see the Applicant's response in respect of Requirement 4 above.
DCO.1.40 (R15)	The Applicant RPAs	**R15 – Air noise envelope** How would this requirement work alongside existing controls? Has the concept of an air noise envelope been used to control noise in other airport developments? What are the different circumstances which might be envisaged under sub-paragraphs (3) and (5)(a)? Why has the timescale of 45 days be identified in paragraph (4)? What does 'declare any further capacity' mean in paragraph (5)? In sub-paragraph (5)(a) is approval required or can the undertaker declare further capacity 'when submitted'?
	RHAs	The requirement would operate independently of existing controls, taking them into account in forecasting the levels of noise which will be emitted from aircraft using the Airport and which relate to how the Airport functions. The existing controls would also be relevant to the monitored levels, with aircraft complying with those controls leading to a particular noise environment being experienced. The concept of a noise envelope has been used at other airports, and this includes Stansted Airport

		and Bristol Airport. A noise envelope is also proposed for Luton Airport in its application for a DCO, considered last year and earlier this year. The different circumstances referred to in (3) and (5)(a) are relevant to who is approving the noise action plan. That will either be the independent air noise reviewer, or in the event of an appeal the Secretary of State. 45 days was chosen as the time period because if there is any appeal this will need to be made within 42 days, and if an appeal is lodged a noise action plan will not be approved and will not need to be published until that appeal has been resolved. This ensures that stakeholders and the public see clear approved information, which avoids confusion with information being published which is subject to appeal processes. In paragraph (5) "declare any further capacity" means the undertaker will not be able to make any new slots available to operators, and that would be the case until an annual monitoring and forecasting report has been approved by the independent air noise reviewer or by the Secretary of State (as is relevant in the circumstances) which confirms compliance with the noise envelope limit identified to have not been complied with during the previous 24 months of the operation of the airport or forecast to not be complied with (as is relevant in the circumstances). The provision applies in either of the circumstances, so the earliest points at which it is confirmed that the same noise envelope limit has been exceeded during the previous 24 months of the operation of the airport. So where a submitted monitoring and forecasting report identifies the exceedance, the restriction on declaring further capacity would bite.

DCO.1.40 (R16)	The Applicant RPAs RHAs	**R16 – Air noise envelope reviews** In sub-paragraph (2) why has the timeframe of 42 days been chosen? R15 (4) includes 45 days as does R16 (6) and R17.
		A period of six weeks is provided for the submission of a draft of the noise envelope review document, which mirrors the period for approval contained at Part 2 of Schedule 11 to the DCO. The 45 day period at (6) allows for any appeal to be lodged before the need to publish, such that if there is an appeal that is progressed and no publication occurs until that is resolved. This is the same rationale as explained for Requirement 15. For Requirement 17, 45 days is provided because it provides the independent air noise reviewer with 42 days to provide comments. The noise model verification report is not proposed to go through an approval process however, as that is not considered to be necessary,
DCO.1.40 (R18)	The Applicant RPAs RHAs	**R18 – Noise insulation scheme** Should this control relate to the coming into operation of Work Nos. 1-7 rather than the commencement of works? Clarify the explanation provided in paragraph 9.27 of the EM.
		The requirement needs to take effect as drafted so that noise insulation measures can start to be provided to properties in the inner zone before operations commence. Paragraph 9.27 of the original EM (which we understand is what is being referred to) states "*In*

		addition, the undertaker must notify each owner of a residential property who is identified within an annual monitoring and forecasting report to be within the Leq 16 hr 66dB standard mode noise contour (as modelled based on actual operations of the previous summer) of their eligibility for home relocation assistance in accordance with section 6 of ES Appendix 14.9.10: Noise Insulation Scheme (Doc Ref. 5.3)." This explains when the undertaker needs to notify persons of their eligibility to Home Relocation Assistance. Further information regarding how that scheme will operate is provided at section 7 of **ES Appendix 14.9.10 Noise Insulation Scheme Update Note** [REP2-031].
DCO.1.40 (R19)	The Applicant RPAs RHAs	**R19 – Airport operations** • Would it be appropriate to be more precise in sub-paragraph (2) with the removal of 'routinely' and clarification of the reasons why the southern/ main runway is not available? • The comments made in ISH2, and the written summary contained within [REP1-057] regarding a potential passenger limit are noted. However, given justification for the need case provided through the introduction of larger planes and increasing load factors, could there be a case where 386,000 commercial air transport movements equates to more than 80.2 million passengers per annum, potentially to a level not mitigated for through the Surface Access Commitments [APP-090], and if so should the passenger levels not be controlled through R19 as well? How would it be ensured that Commitment 14 of the Surface Access Commitments is adequate to deal with such a scenario? • How realistic are anticipated rates of aircraft fleet transition contained within the ES when

		dealing with projected demand levels for 2047, some 20 years in the future?
		Routinely The Applicant has updated Requirement 19(2) in version 6.0 of the **dDCO** submitted at Deadline 3 (Doc Ref. 2.1 v6) to remove the word "routinely" given that this is not considered to alter the meaning of the provision. However, it is important that the Applicant is able to continue to use the northern runway when the main runway is unavailable for any reason, as is currently the case. For example, if there was an incident on the main runway or damage to that runway, the Applicant would propose to use the northern runway (as it would currently) using the same flight paths. This would not result in any increase of movements and associated noise within those hours by comparison to use of the main runway. The central purpose of Requirement 19(2) is to ensure that only one runway will ever operate between 23:00 – 06:00, and the main runway will continue to be the primary runway which is used during those hours, preserving the status quo. The current wording achieves this. **Passenger limit** Whilst it is theoretically possible that the passenger throughput could grow to exceed 80.2mppa, it is highly unlikely and a restriction to that limit would not meet the relevant policy tests of necessity and reasonableness set out in the ANPS at paragraph 4.9. It is relevant that the evidence of the Joint Local Authorities is that the Applicant's forecasts that traffic

		may reach 386,000 ATMs and 80.2mppa overstates the likely growth facilitated by the Project. The JLAs doubt the capacity of the airspace to support the forecast traffic movements and doubt the ability of the airport to sequence aircraft with the departure separations necessary to achieve the forecast throughput. The JLAs also doubt the ability of Gatwick to grow its year round, off-peak operations to meet the forecasts. For the JLAs, York Aviation have recognised that the forecasts may be used for the purposes of a worst case environmental assessment but they question their achievability. In its **Needs Case Review for Local Impact Reports** (**Joint Sussex Authorities' LIR Appendix F** [REP1-069]), York Aviation state: "*46. Overall, the consequence of this, given the capacity constraints at peak periods, is most likely to be that the total number of passengers and commercial air traffic movements has been further overstated.*" Gatwick is more confident but no party has suggested that the forecasts understate the airport's likely throughput. The Environmental Assessment has assessed the impact of the NRP at the full forecast level and this should create confidence that its assessment of effects and its recommendations for mitigation are already robust. With an ATM cap in place, further passenger growth could only come from increased aircraft sizes or increased passenger loading ratios. The Applicant's case already forecasts average load factors of 92% for every plane and a near 20% increase in average aircraft sizes by 2047 (**Forecast Data Book** paragraph 8.3.4 [APP-075], under the Northern Runway, average aircraft size of 227 seats in 2047 compares with 193 in 2019). Any limit on passenger numbers would run contrary to the objectives of policy, which provides strong support for proposals which respond to aviation demand because of the benefits that it brings. Policy

		also seeks best use, rather than better use, of airport infrastructure - not least because the most sustainable way of meeting aviation demand is by encouraging the efficiency of meeting that demand through less infrastructure and fewer aircraft. There should, therefore, be a presumption against the imposition of planning restrictions (or operating restrictions) on passenger numbers. In GAL's view, any passenger limit would need to be robustly justified in that context. In its **Written Summary of Oral Submissions at ISH2** [REP1-057] at paragraph 3.1.15, the Applicant set out details of controls at other airports. There is no settled precedent approach – some airports have ATM restrictions, some have passenger restrictions, some have both and some have neither. Gatwick has operated without restrictions but nevertheless been notably effective at reducing its noise footprint and developing a strong sustainable transport strategy with industry leading mode share achievements. Draft Requirement 19 proposals a limitation on ATMs. Of the two potential capacity constraints, an ATM constraint is the most effective in limiting the environmental effects of airport expansion. It will also act to encourage more efficient use of aircraft capacity. Whilst it is not a cap on passenger numbers it clearly is a substantial constraint on their ability to grow significantly above forecast levels. Whereas more planes would have additional environmental effects, more passengers would bring greater economic and social benefits and it is not obvious that any greater environmental effects would arise. The potential for larger aircraft has already been factored into the ES. Even if that turned out to be an underestimate, noise controls within the DCO would limit and mitigate any unexpected noise effects. The only real potential for greater effects, therefore, might be said to be related to more traffic. In that

		respect, however, it should be recognised that: 1. The Government's commitments under the Climate Act 2008, which are given effect through its Transport Decarbonisation Plan, mean that the carbon effects of any increase in traffic will be managed within a trajectory to Net Zero. 2. The Applicant's Transport Assessment demonstrates that the basket of mode share and highway improvements committed to within the NRP application create capacity on the road network such that traffic conditions forecast out to 2047 are acceptable and not close to the point where further investment or restraint would be necessary (see, for example, Figures 1 and 2 of the **Post Covid VISSIM Sensitivity Tests for 2032 and 2047** (Doc Ref. 10.19). 3. The same is true of Air Quality impacts where the evidence demonstrates that the NRP does not threaten air quality objective limits (see for example the Applicant's answer to ExQ AQ.1.22 (Doc Ref. 10.16). Marginal additional growth in the long term would not affect that conclusion. The **Surface Access Commitments** (Doc Ref. 5.3 v2) collectively limit and mitigate against any adverse effects arising from greater passenger traffic growth. The mode share Commitments 1-4 dilute and limit any impact, whilst the parking Commitments 8-12 limit and mitigate any risk that harm could arise from greater parking demand. The public transport Commitments 5-7 also limit any risk of harm and Commitment 13 (Sustainable Transport Fund) is particularly significant in providing a stream of continuous investment in sustainable transport to be directed by the TSFG to respond to evolving transport demands and progressively building to an increasingly robust framework of sustainable transport options. Any risk of greater passenger numbers is, by definition, a long term risk and, by the time that risk may crystallise Gatwick passengers will have benefited from years of

		further continued investment in public transport capacity. In case it is necessary, Commitment 14 (Transport Mitigation Fund) acts as a backstop. It provides a reserve fund to mitigate against the adverse effects of any unforeseen impacts. The text above explains why a risk of adverse effects arising from greater than forecast passenger numbers is a very remote risk but Commitment 14 provides the means of mitigating any effects should thar risk come to fruition. As a solution it is far more satisfactory and consistent with policy than imposing a limit on the success of Gatwick. Both the Sustainable Transport Fund and Transport Mitigation Fund (together with other funding support for the Project) are secured in the **draft Section 106 Agreement** [REP2-004]. **Fleet transition** This question is largely addressed above. The Applicant considers the transition rates between fleet types during the 2020s and 2030s to be a realistic base case. This transition captures the more efficient/quieter fleet types as well as the ongoing increase in average aircraft size already discussed in this question. By 2047 the average aircraft size is forecast to increase to 227 seats (2047, NRP) compared to 193 in FY2019, this already provides for significant growth compared to current performance levels and includes the impact of an increasing share of long haul wide-body aircraft with higher seat counts.
DCO.1.41	The Applicant	**Schedule 3 (Stopping Up of Highways and Private Means of Access & Provisions of New Highways and Private Means of Access)**

		Should the title reflect the titles in Articles 13 and 16 for consistency?
		The title of Schedule 3 has been amended in version 6.0 of the **dDCO** (Doc Ref. 2.1 v6) submitted at Deadline 3.
DCO.1.42	The Applicant IPs	**Approach to Tracking Mitigation** The Mitigation Route Map [APP-078] has been prepared to demonstrate that all necessary controls, mitigation and commitments of enhancement have been identified and secured. Why is the Mitigation Route Map submitted for information only? Would it be more effective for IPs for the Mitigation Route Map to be developed as a Register of Environmental Actions and Commitments to track progress of the commitments and record outcomes and evidence of the actions taken, as well as recording and addressing any additional environmental issues that arise during construction?
		An explanation as to why the **Mitigation Route Map** [REP2-011] is submitted for information only is provided against DCO.1.6. Mitigation Route Maps (MRM) are commonly prepared by applicants to accompany DCO Applications in the format proposed by the Applicant for this Project and which is considered best practice, including by PINS. By way of example, the ExA for the Lower Thames Crossing DCO Application requested that the Applicant submit a MRM in the first round of Examination Questions (ExQ1 Q16.1.4) stating that *"it would be useful for the ExA and Stakeholders if the Applicant could provide a*

		single document containing a mitigation route map". Procedures to monitor and record progress of any commitments are contained in a number of key environmental control documents and their respective securing mechanism. For instance, the **Surface Access Commitments** [APP-090], **Carbon Action Plan** [APP-091] and **The Noise Envelope** [APP-177]. Procedures to address any environmental issues during construction of the Project are contained within the **Code of Construction Practice** (CoCP) [REP1-021] and relevant Management Plans. By way of example: > The Construction Workforce Travel Plans will contain a monitoring strategy and reporting to the relevant planning authority, as described in Section 10 of the **Outline Construction Workforce Travel Plan** [APP-084]; > Monitoring procedures for construction dust will be confirmed through the Construction Dust Management Plans to be approved by the relevant planning authority, including a procedure to change monitoring locations if deemed necessary, as described in paragraph 5.8.2 of the **CoCP** [REP1-021]; and > Monitoring and reporting of all noise and vibration commitments will be carried out, with monitoring data to be made available to the relevant planning authority, as described in paragraph 5.9.6 of the **CoCP** [REP1-021]. A Register of Environmental Actions and Commitments (REAC) is therefore not considered necessary, as it would in effect duplicate outputs to be monitored and reported through the future

		Management Plans. REACs are also only prepared to capture mitigation identified within Environmental Statements and therefore would not capture the wider suite of mitigation measures secured through non-ES documents, such as the Design Principles and Section 106 Agreement, and which are captured in the MRM.
DCO.1.43	The Applicant	**Approach to Securing Mitigation** Paragraph 5.5.16 of the Planning Statement [APP-245] indicates that Level 1 Control Documents are secured by either the DCO or the NRP s106 agreement. Why should mitigation be secured through a s106 agreement and not through the DCO?
		The Applicant's approach to securing mitigation through DCO Requirements and s106 obligations is set out in the Applicant's response to Action 11 from ISH 2 (Section 2.2 of the **Applicant's response to Actions ISH 2-5** [REP2-005].)
DCO.1.44	The Applicant	**Approach to Securing Mitigation** The Planning Statement (paragraph 5.5.16 [APP-245]) notes that Level 2: Subsequent Approvals would be submitted after the DCO is made/ on specific triggers in the NRP s106 agreement. Would such approval be tied to provisions in the DCO? Why should Level 2 mitigation be secured through a s106 agreement and not through the DCO?
		As explained in response to DCO.1.43 the Applicant's approach to securing mitigation through DCO

		Requirements and s106 obligations is set out in the Applicant's response to Action 11 from ISH 2 (section 2.2 of the **Applicant's Response to Actions ISH 2-5** [REP2-005]). In some circumstances the subsequent approval has been tied to provisions in the draft DCO: for example, the landscape and ecology management plans are Level 2 documents subject to a subsequent approval under DCO Requirement 8. The only Level 2 documents which are subject to a subsequent approval tied to provisions in the DCO s106 Agreement are the ESBS Implementation Plans. These have been secured through the s106 Agreement to allow for the flexibility of drafting practical provisions to encourage the relevant parties to work together collaboratively on producing and implementing the ESBS Implementation Plans. At Deadline 2, the Applicant submitted a table comparing each of the provisions in the existing section 106 Agreement (dated 24 May 2022) to the provisions proposed under the **draft DCO s106 Agreement** [REP2-004] (Appendix A of the **Applicant's Response to Actions - ISHs 2-5** [REP2-005]. This table shows that a number of the provisions included in the draft DCO s106 Agreement are to replicate existing provisions rather than being specifically required for the Project.
DCO.1.45	The Applicant RPAs	**Approach to Securing Mitigation** The Applicant proposed to use a CoCP [REP1-021] to mitigate construction phase impacts. Why has a CoCP approach been adopted rather than a Construction Environmental Management Plan that is subject to local authority approval to mitigate construction impacts? RPAs are invited to comment on the alternative approaches.
		The **Code of Construction Practice** (CoCP) [REP1-021] outlines the management systems and

		measures that will be in place through the construction of the Project, as secured under Requirement 7 of the **dDCO** (Doc Ref. 2.1 v6). A Construction Environmental Management Plan is limited to environmental management measures whereas the CoCP includes but is not limited to procedures and measures on environmental matters. For instance, it describes the role of the Community Liaison Officer and is accompanied by the **Construction Communications and Engagement Plan** in **Annex 7** [REP2-015]. The CoCP as submitted can be (and is being) tested through examination and the Applicant is taking account of any relevant feedback from the local authorities. The submitted CoCP is sufficiently detailed in setting out the comprehensive suite of procedures and measures that will be in place throughout the construction of the Project to manage and minimise disturbance from construction activities. As such, a further update and approval of the CoCP is not required, unless a change or update is required which would be subject to Crawley Borough Council's approval under Requirement 7 of the **dDCO** (Doc Ref. 2.1) An example of where a change or update may be necessary is provided in response to GEN.1.9. The CoCP (para 2.2.7) describes where further management plans are to be prepared on specific construction or environmental measures and to be submitted to approval by the relevant planning authority or relevant highway authority (as applicable) prior to commencement of the relevant construction works. This includes the following plans to be subject to further approval by the relevant authority and will be reflected in the dDCO to be submitted at Deadline 4 (see response to DCO.1.48): • The Construction Workforce Travel Plan, to be substantially in accordance with the Outline

		Construction Workforce Travel Plan; • The Construction Traffic Management Plan, to be substantially in accordance with the Outline Construction Traffic Management Plan; • Detailed Arboricultural and Vegetation Method Statement(s), to be substantially in accordance with the Outline Arboricultural and Vegetation Method Statement. • Construction Dust Management Plans, to be substantially in accordance with the Draft Construction Dust Management Plan; • Soil Management Plans, to be substantially in accordance with the Soil Management Strategy; • Site Waste Management Plan, to be substantially in accordance with the Construction Resources and Waste Management Plan. The CoCP (paras 3.1.1 to 3.1.3) also confirms that GAL does and will continue to operate an Environmental Management System (EMS), certified to British Standard EN ISO 14001. Each Principal Contractor to be appointed by GAL will be required to have an EMS in place accredited to ISO 14001 and be required to plan their works in advance to ensure that the principles established in the CoCP are complied with.
DCO.1.46	The Applicant RPAs	**Status of CoCP** Table 9.8.1 of ES Chapter 9 refers to the CoCP [REP1-021] as an 'outline CoCP'. Is the CoCP an outline document? And if it is, should it be subject to local authority approval when

		more detail is available? If the CoCP is not an outline document, do the RPAs consider that the CoCP is sufficiently detailed to mitigate construction phase impacts?
		The singular reference to an 'outline CoCP' in **ES Chapter 9: Ecology and Nature Conservation** (Table 9.8.1) [APP-034] is in error. As made clear in the remainder of the **ES Chapter 9** and the application as a whole, the **Code of Construction Practice** [REP1-021] is not an outline document. Under Requirement 7 of the **dDCO** (Doc Ref. 2.1 v6), construction of the development must be carried out in accordance with the CoCP unless otherwise agreed with CBC. The CoCP as submitted is sufficiently detailed to direct the procedures and measures that will be in place throughout the construction of the Project, with future management plans to be prepared on specific construction or environmental measures for approval by the relevant authority. Further commentary on the CoCP is provided in response to DCO.1.45.
DCO.1.47	The Applicant	**Approval of Site Waste Management Plans** According to the CoCP (paragraph 2.2.9 [REP1-021]) the proposed Site Waste Management Plans (SWMP) would not be subject to approval by local planning authorities. Explain why SWMPs are not subject to local authority approval, particularly where they relate to off-airport works. Would they be subject to consultation?

		In developing the detail of the content of these plans, the Applicant considers that it would be appropriate for these plans to be approved by Crawley Borough Council. As explained in response to DCO.1.48, the Applicant will submit an updated version of the dDCO at Deadline 4 which includes specific DCO Requirements for each of the control documents required for construction. There will be a specific DCO Requirement requiring the SWMPs (to be substantially in accordance with the **Construction Resources and Waste Management Plan** [APP-087]) to be submitted to and approved by CBC. The SWMPs are iterative documents, to be updated during construction to take account of how waste is being managed in line with targets to divert waste from landfill and to record periodic review of waste management facilities (explained in para 1.4.4 of the CRWMP). The principles for managing construction waste from the Project are set out in the CRWMP. A template of the SWMPs is contained in Annex A of the CRWMP making clear what information will be provided. Feedback from Local Authorities on the content of the template is welcomed, noting that the only comment received so far is on how the dDCO ensures that the SWMPs follow the CRWMP template.
DCO.1.48	The Applicant	**Requirements Related to Control Documents** R12 and R13 of the dDCO provide that no part of the authorised development is to commence until a construction traffic management plan (CTMP) and construction workforce management plan (CWMP)

		respectively have been submitted to and approved in writing by the relevant highway authority. Why are CTMP and CWMP covered by specific requirements when other control documents are not?
		In response to this question, the Applicant will update the DCO Requirements in Schedule 2 of the **dDCO** (Doc Ref. 2.1 v6) for Deadline 4 to include specific requirements for the Level 2 Control Documents that are required for construction as explained in response to DCO.1.47. The relevant DCO Requirements will set out the specific construction Level 2 Control Documents that are required for approval, when they must be in place by and where relevant, the Level 1 Control Document that the Level 2 Control Document must be substantially in accordance with..
DCO.1.49	The Applicant RPAs	**Approval of Construction Phasing** The Indicative Construction Sequencing [APP-088] is not included in the CoCP. Should the phasing of the construction programme be subject to RPA approval and secured by a Requirement in the DCO?
		As explained in Section 5.3 of **ES Chapter 5: Project Description** [REP1-016], the **Indicative Construction Sequencing** [REP2-016] has been developed to support the DCO application and enable a representative assessment of the likely significant effects, but are not fixed dates within a prescribed programme or sequence. The DCO Application's suite of control documents and the **dDCO** (Doc Ref. 2.1 v6) itself contain a series of controls to manage the timing and sequencing of works where required, for instance to

		ensure that mitigation or protection measures are in place before relevant works commence. By way of example: • Requirement 6(2) of the **dDCO** (Doc Ref. 2.1) secures the timing of the national highway works relative to the commencement of dual runway operations; • Requirement 23 of the **dDCO** (Doc Ref. 2.1) secures the submission and approval of a Flood Compensation Delivery Plan prior to commencement of relevant works and which must include a timetable for delivery of flood compensation areas. • Article 40 of the **dDCO** (Doc Ref. 2.1) secures the submission and approval of an Open Space Delivery Plan which must include a timetable for the delivery of the replacement open space areas. • The **Code of Construction Practice** (CoCP) [REP1-021] explains that where further design information is required to identify detailed mitigation measures, management plans will be submitted for approval by the relevant planning authority (or highway authority where relevant) following the grant of consent when more detailed information is available. These detailed plans will be developed and informed by construction phasing and sequencing, as relevant to the topic/part of the development, for instance: • The Construction Traffic Management Plan(s), to be prepared substantially in accordance with the **Outline Construction Traffic Management Plan** [APP-085], will be informed by the phasing of the construction works associated that particular part of the development, in order to inform and explain how the construction traffic would be managed and controlled throughout

		the duration of the relevant construction works. • Similarly, the Construction Workforce Travel Plan(s), to be prepared substantially in accordance with the **Outline Construction Workforce Travel Plan** [APP-084], will be informed by the phased of construction works to establish the construction workforce-related trips to the particular part of the development that is under construction, to then inform the Travel Plan measures, communication strategy and monitoring framework; • The production of the Construction Dust Management Plan will be site-specific informed by the magnitude of construction work and any cumulative effects where works across the site could be occurring in parallel. The production and submission of these detailed plans to the RPA will also be dictated by the construction programme. As such, the RPA(s) will have sight of the construction phasing and sequencing through the receipt of the detailed plans as specified under the CoCP's existing drafting.
DCO.1.50	The Applicant	**Buildability Report – Temporary Construction Compounds** The CoCP (paragraph 1.3.3 [REP1-021]) refers to the Buildability Report [APP-079 to APP-081] for information on the use of construction laydown and welfare facilities, but the Buildability Report is not included in Schedule 12 of the dDCO (Documents to be certified). Should the Buildability Report be included in Schedule 12 of the dDCO? Alternatively, should the CoCP be updated to include further information about how the Applicant is

		intending to use the temporary construction compounds?
		The **Buildability Report (Parts A and B)** [REP2-013, APP-080 and APP-081] describes the scope, methodology and sequence of the logistic and construction works required for the Project's construction. As made clear throughout the Buildability Reports (Parts A and B), the construction activities and methods described in the report are indicative at this stage and will be subject to further refinement during the detailed design stage, following the appointment of the Principal Contractor. As such, they contain a level of detail that it is not appropriate to be certify under Schedule 12 of the **dDCO** (Doc Ref. 2.1 v6). Instead, where necessary, appropriate controls in respect of the temporary construction compounds are secured in other control documents. For instance, Section 4.5 of the **Code of Construction Practice** (CoCP) [REP1-021] describes the main temporary construction compounds, including the maximum heights (added at Deadline 2), facilities and fencing provisions, together with working hours in paragraph 4.2.4. Where necessary, specific measures or controls to be in place at certain compounds are described further in the CoCP or its Annexes under the relevant environmental heading (for example, paras 4.9.7, 4.9.9, 4.9.17, 5.2.3 and 5.7.3 of the CoCP). This level of information on the construction compounds is considered appropriate in the CoCP, particularly given their temporary nature.
DCO.1.51	The Applicant	**Role of the Environmental Co-ordinator** Paragraph 6.1.2 of the CoCP [REP1-021] refers to the Environmental Co-ordinator. Can the Applicant expand on the role of the Environmental Co-ordinator in relation to the procedures

		for ensuring compliance with the CoCP?
		The Environmental Co-Ordinator will work with the Applicant's Principal Contractors to ensure that the construction staff receive training on the measures within the CoCP and the management plans (e.g. via toolbox talks) and will co-ordinate monitoring to ensure that the measures are being implemented correctly. The Environmental Co-Ordinator will also liaise with the environmental specialists on maintaining and implementing the management plans during the construction process. The specific responsibilities of the Environmental Co-Ordinator and working procedures within the construction team will developed once the appointed.
DCO.1.52	The Applicant	**CoCP – Monitoring and Review** Can the Applicant explain the Procedures for monitoring and reviewing the CoCP and how this is secured within the DCO and CoCP?
		The **Code of Construction Practice** (CoCP) [REP1-021] and its annexes sets out the management systems and measures that will be in place throughout the construction of the Project. Requirements for monitoring, reviewing and reporting of any management systems or measures are described within the CoCP and its Annexes. Examples of these processes are provided in response to DCO.1.42. Should a change or update be required to the CoCP itself, Requirement 7 of the **dDCO** (Doc Ref. 2.1 v6) provides a mechanism through which agreement of any changes / updates could be sought from Crawley Borough Council.

DCO.1.53	CBC HDC MSDC WSCC	**Community Funding** Paragraph 4.14 of the Joint West Sussex LIR [REP1-068] addresses the 2022 s106 agreement. It indicates that the authorities do not consider that the sums generated by the Community Fund will be proportionate to the environmental harm caused by airport expansion as was the Government's expectation in the ANPS. It notes that the sums proposed by the Airports Commissions were far greater than those proposed by the Applicant. Please confirm what sums were proposed by the Airports Commission and how these compare with those proposed by the Applicant.
		N/A – this question is not directed to the Applicant.
DCO.1.54	CBC HDC MSDC WSCC	**CoCP – Potential Amendments** Paragraphs 21.6 and 21.37 of the Joint West Sussex LIR [REP1-068] state that R7 does not specify the follow-up management plans that require completion and approval as part of the CoCP. Specifically, what amendments would the West Sussex Authorities wish to see to R7?
		N/A – this question is not directed to the Applicant.

DCO.1.55	CBC HDC MSDC WSCC	**Outline Operational Waste Management Plan** Paragraph 22.4 of the Joint West Sussex LIR [REP1-068] states that the dDCO should include a requirement for an outline operational waste management plan. Specifically, what would the West Sussex Authorities wish to see in such a requirement? Does this relate to the request for an Odour Management and Monitoring Plan referenced in Appendix M [REP1-069]?
		An **Operational Waste Management Strategy** (Doc Ref. 10.12) is submitted at Deadline 3. The document explains how operational waste from Gatwick Airport is currently managed, how waste volumes are predicted to change as a result of the Project and how operational waste would be managed once the Project is constructed. The document has been prepared taking account of information requested through the **Statement of Common Ground between GAL and West Sussex County Council** [REP1-033] and Section 22 of the **Joint West Sussex Local Impact Report** [REP1-068]. In the **dDCO** submitted at Deadline 3 (Doc Ref. 2.1 v6), new Requirement 25 (operational waste management plan) has been added which requires the undertaker to submit an operational waste management plan to CBC within six months after the commencement of dual runway operations for approval. This plan must be substantially in accordance with the **Operational Waste Management Strategy** (Doc Ref. 10.12).
DCO.1.56	CBC HDC	**Detailed Design Controls**

	MSDC WSCC	Table 24.1 of the Joint West Sussex LIR [REP1-068] outlines the need for a suitably detailed design control document setting clear design principles for the Project as a whole but also addressing design controls for specific Works areas including clear parameter and works plans (Appendix 1 of the DAS). Specifically, what would the West Sussex Authorities wish to see in such a document and a requirement to secure this? How would this relate to R4?
		N/A – this question is not directed to the Applicant.
DCO.1.57	The Applicant	**Detailed Design Controls** At ISH2 the ExA raised concern that the description of Work Nos. in Schedule 1 of the dDCO were not detailed enough. In addition, concern was raised that the design principles in Appendix 1 of the DAS [APP- 257] are too broad. In paragraph 24.79 of its LIR [REP1-068] the Joint West Sussex authorities stated its position that the design principles in Appendix 1 of the DAS need to be expanded to provide site specific design principles for the Works based not just on building type but on the contextual analysis of the site. The Applicant is asked: a) To provide an expanded description of the works in Schedule 1 of the dDCO that reflects more closely the description of works as described in volumes 2-4 of the DAS [APP-254, APP-255 and APP-256]. b) To expand the design principles in Appendix 1 of the DAS to provide site specific design

		principles for each separate Work No. based not just on building type but on the contextual of the individual site of each Work No. Consideration should also be given to how Work No. specific design principles work within the overarching design principles for the project as a whole. c) If the Applicant disagrees with the above alterations to Schedule 1 of the dDCO and Appendix 1 of the DAS, it is asked to set out clearly what alterations it would be willing to make in order to satisfy the ExA that there is sufficient information contained in the DCO and control documents on the layout, siting, scale and external appearance of buildings to ensure that good design will be achieved in detailed design and the approval process under R4.
		As explained in **The Applicant's Response to ISH2 Actions** [REP1-063], the Applicant does not consider the DCO to be the appropriate vehicle for detailed design information, which the Applicant considers is best outlined through the indicative designs and design principles in the **Design and Access Statement Appendix 1** (Doc Ref. 7.3 v3). As such and in response to the ExA's request, the Applicant has undertaken a comprehensive review of the **Design Principles** (Doc Ref. 7.3 v3) and an updated version is submitted at Deadline 3. As per Requirements 4, 5 and 6 of the dDCO (Doc Ref. 2.1 v6), all design details and excepted development must be in accordance with these Design Principles. In making the updates, the Applicant has either: specified the relevant Work No. against any existing site-specific design principles; or drafted new site-specific principle(s) for each Work No. unless not considered appropriate for the reasons set out below.

		• No specific design principles are included for Work Nos. 1 to 7, unless required for Project specific mitigation measures (e.g. DBF13 and DBF14). As explained in **The Applicant's Response to ISH2 Actions** [REP1-063], the Applicant is the operator of a Civil Aviation Authority (CAA) certified aerodrome and is therefore required to seek prior approval from the CAA of impending changes affecting its infrastructure or management systems. In accordance with CAP 791 (Procedures for changes to aerodrome infrastructure)[5], the design of Works Nos. 1 to 7 is required to follow a three-part process before works can commence and a licence to operate the revised aerodrome is granted. CAP 791 sets out the design information, safety assurances and analysis that must be provided as part of the design approval process. These works are therefore considered to be sufficiently detailed in the **dDCO** (Doc Ref. 2.1 v6) as drafted and to not impede upon the CAA approval process that must be carried out, as required by UK Regulation (EU) 139/2014. • No specific design principles are included for Work No. 8 as this relates to the removal of existing airside support facilities and not the construction of new/replacement structures or facilities that would entail a new design. • No specific design principles are included for Work No. 17 as this relates to the relocation of the Hangar 7 support structures, in that the existing structures are to be removed and relocated in the specified area for Work No. 17. • No specific design principles are included for Work No. 19 as this relates to the construction of a pumping station, which will be dictated by its functional design.

[5] https://www.caa.co.uk/publication/download/13963

		• No specific design principles are included for Work No. 34(a) and (b) as it relates to the removal of Car Park B which will be re-developed as the replacement open space, which is subject to its own site-specific design principles. The Applicant considers that the level of prescription in the **Design Principles** (Doc Ref. 7.3 v3) is more appropriate than layering additional description to the DCO Schedule itself.