

Responses to the Applicant's Response to the ExA's Written Questions (ExQ1)

On behalf of Marathon Asset Management MCAP Global Finance (UK) LLP (Interested Party Number: 20044640) ("Marathon")

ExQ1	Question	Applicant's Response	Response
CA.1.3	<p>Reasonable Alternatives to Compulsory Acquisition</p> <p>In the light of the CA Guidance, in particular paragraph 8, please describe:</p> <p>a) How the ExA can be assured that all reasonable alternatives to compulsory acquisition (CA) (including modifications to the scheme) have been explored;</p>	<p>In terms of alternatives to the use of compulsory acquisition powers, the Applicant has sought and continues to seek private agreements. The Land Rights Tracker (Doc Ref. 8.6 v2) shows progress being made in private negotiations which is the alternative to the use of CA powers that the Applicant is pursuing.</p>	<p>There is no entry in the Land Rights Tracker for Marathon. Marathon would request that it is included in the Tracker.</p>
CA.1.7	<p>Acquisition of Other Rights or Land</p> <p>Are any land or rights acquisitions required in addition to those sought through the draft DCO (dDCO) before the Proposed Development could become operational?</p>	<p>The Applicant can confirm that there are no additional land or rights acquisitions required in addition to those sought through the dDCO (Doc Ref. 2.1 v6).</p>	<p>This statement is understood to be incorrect as the temporary northern access proposed by GAL to the north of Marathon's Property (north of Plot 1/026) (which temporary access is required to maintain access to the hotel) may necessitate provision of land outside of Order Limits. Marathon are awaiting from GAL further details of the proposed northern access (which have not yet been provided).</p>
CA.1.9	<p>Scope and Purpose of Compulsory Acquisition Powers</p> <p>It is stated that land within the Order Limits (OL) will be subject to a statutory authority to override easements and other rights, and to extinguish private rights of way upon the</p>	<p>In the event that the existing rights and/or interests in or over land are incompatible with the new rights that are required for the Project, the Applicant will require the power to override such rights and or interests. As the Applicant seeks to reduce the impact of the Project on third-party land, temporary possession powers would allow the Applicant to carry out works on land without retaining any permanent ownership. An example of the use of this</p>	<p>Please see Marathon response to Ex A Q1 CA.1.9.</p>

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	<p>appropriation of the land for the purposes of the DCO.</p> <p>Please explain in further detail:</p> <p>a) The need to seek such a wide-ranging power and why all such rights and easements cannot be specifically identified.</p> <p>b) Why it is necessary to include powers of CA as a means of overriding existing rights and interests in or over land, as well as creating new rights over land, and granting the right to take temporary possession (TP) of land? c) The nature and extent of any delay to the project that might otherwise result. d) What alternatives to this approach have been explored?</p>	<p>power would be temporary possession to carry out surveys where further rights/interest in the land are not required until later in the development or not at all. The granting of this power provides the Applicant with the flexibility to use the least impactful power where appropriate to minimise impact on affected persons. Further justification of these powers is provided within section 7 of the Explanatory Memorandum (Doc Ref. 2.2 v4).</p>	
CA.1.10	<p>Scope and Purpose of Compulsory Acquisition Powers</p> <p>The SoR, paragraph 6.2.6 [AS-008], states that the OL have been defined to allow sufficient flexibility to enable the final detailed design of the Proposed Development to be optimal [AS-008]. In addition, paragraph 3.2.3 indicates that flexibility is required particularly for the highways works and</p>	<p>Article 6 of the draft DCO (Doc Ref. 2.1 v6) sets out the limits of works. The numbered works in Schedule 1 of the draft DCO must be situated within the limits shown in the corresponding numbered area on the Works Plans (Doc Ref. 4.5 v4). Buildings subject to a height parameter have been listed in Article 6(3) and the heights are shown on the corresponding Parameter Plans [AS-131]. Article 6(4) sets out the specific limits for surface access works and Article 6(5) sets out the limits of the exit/entrance taxiways.</p>	<p>Marathon made submissions at CAH1 in respect of what is considered an excessive land take/flexibility in relation to Marathon's property. Marathon consider that GAL have failed to provide adequate plot specific justification for both acquisition and acquisition of land and new rights.</p> <p>Please see Marathon's CAH1 Post Hearing Submissions for further details of Marathon's concerns (which we do not repeat here to avoid duplication).</p>

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	<p>some of the runway exit/entrance taxiways.</p> <p>a) For the avoidance of doubt, please set out and justify the extent of the flexibility that the submitted scheme would allow in terms of Limits of Works and parameters providing dimensions where relevant.</p>	<p>The detailed designs for the surface access highway works will be informed by further ground investigations and consideration of the relevant guidance and standards at the time. The detailed designs will need to be approved by National Highways. At this stage the exact location of the surface access work cannot be determined and therefore a worst case assessment on the basis of the limits of deviation secured through Article 6(4) has been carried out.</p>	
	<p>b) How would it be ensured that powers of CA would not be exercised in respect of land not ultimately required as a result of the detailed design process?</p>	<p>Article 27 of the draft DCO restricts the use of CA powers to "so much of the Order land as is required for the construction, operation or maintenance of the authorised development, or to facilitate it, or is incidental to it, or is required as replacement land".. The Applicant will only exercise powers in respect of the land that is required following detailed design and likely after constructing pursuant to temporary powers. In that way, the Applicant will only acquire land and rights pursuant to Articles 27 and 28 as necessary once the works are complete. Aside from the legality of the article, there's no commercial incentive for the Applicant to pay more through compensation for land which is not required to deliver the scheme. This approach is also why the Applicant has sought authority to use these powers for 10 years under Article 31; the Applicant can then use a lesser power to carry out the construction works knowing that it will have</p>	<p>Consistent with our response to a) above, Marathon considers that an excessive permanent land take is proposed at this stage. Whilst Marathon's preference is to see the permanent land take in relation to Marathon's property reduced prior to the grant of the DCO (discussions regarding which are ongoing with GAL), it is concerned that there should be some mechanism by which GAL can be held to account to ensure that powers of CA would not be exercised over land not actually required. It is noted that other landowners at CAH1 have raised similar concerns. Marathon will be inviting the ExA to impose a binding obligation/enforceable mechanism to secure this, absent agreement with GAL.</p>

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		time to exercise permanent acquisition powers over only the extent of the land that is required permanently. If these powers were not available for this length of time, the Applicant may be required to permanently acquire the full extent of the land required for construction as well as the permanent development.	
CA.1.12	<p>Whether a Compelling Case in the Public Interest Exists</p> <p>The SoR, paragraph 8.2.1 [AS-008], states that the Applicant has taken steps to engage with these persons through formal consultation to understand the direct and indirect impacts on them. Paragraph 8.2.2 explains that the Applicant has engaged directly with individual landowners and those with an interest in the affected land. As a result of this engagement GAL has had a better understanding of the direct and indirect impacts on individual landowners. Please provide further details, with examples where available:</p> <p>a) How has such engagement helped to shape the proposals and enabled the Applicant to make changes to designs to minimise the private loss?</p>	<p>b) The Applicant has appointed property specialist Dalcour Maclaren to engage with property owners and businesses impacted by the Project's proposals, with feedback from meetings being fed back to the Applicant. Due to the complex nature of the properties and businesses, often additional specific specialists have also been employed to support the engagement, ensuring that the impacts can be fully understood to allow for the best understanding of the impacts and potential mitigation; this has included commercial property experts, hotel experts and petrol filling station experts, supported by the engineering, acoustic, traffic, flood and other specialist within the project team, to ensure that the Applicant has a thorough understanding of issues. As an example, additional temporary accommodation works are being proposed to Marathon Asset Management</p>	<p>Whilst Marathon welcome the recent engagement by GAL, key information is still awaited from GAL in order for Marathon to fully understand the impacts of the Project/DCO on Marathon's property and to assess and agree appropriate mitigation in respect of access to the hotel, noise mitigation and matters affecting the operation of the hotel. Please see Marathon's Post CAH1 Submissions for further details.</p>

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	<p>b) How has the direct engagement with individual landowners given the Applicant a better understanding of the direct and indirect impacts on them?</p> <p>c) Please provide detail, where available, of the direct and indirect impacts thereby identified.</p>		
CA.1.22	<p>Whether Adequate Funding is Available</p> <p>The Funding Statement, paragraph 3.3.1 [APP-009], states that an estimate of the amounts necessary to cover the payment of compensation associated with the exercise of any CA powers granted has been included in the overall project cost.</p> <p>Please provide a separate estimate of the cost of land acquisition. Please explain further the nature of the expert advice taken in that respect and the basis for and reliability of this estimate?</p>	<p>The current Property Cost Estimate for acquisition of land and rights is £121m. This has been calculated overall by property specialists Dalcour Maclaren, with support from a number of experts, including Jones Lang LaSalle (business disruption), Alexander James (petrol station specialists) and Strutt and Parker. It has recently been updated (Feb 2024) to take into account the latest information provided by affected parties in the course of the Applicant's negotiations on acquisition.</p>	<p>At CAH1, Counsel for Marathon requested details of the percentage of agreements GAL had reached for land actually subject to compulsory acquisition powers pursuant to the DCO. The Ex A asked GAL to provide this. Marathon will await GAL's response.</p>

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<p>CA.1.29</p>	<p>Scope and Purpose of the Compulsory Acquisition Powers</p> <p>Paragraph 5.4.3 of the SoR [AS-008] explains that Art. 38 (time limit for exercise of authority to temporarily use land for carrying out the authorised development) would provide that GAL must exercise its power to temporarily use land or interests within ten years of the Order being granted. However, this leaves the period of TP open-ended from the date the power is exercised.</p> <p>Should there not also be a time limit after which the TP of the land or interests must cease?</p>	<p>Article 37(3) of the dDCO provides that: "The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period [exercised compulsory acquisition powers]".</p> <p>This provides an appropriate time limit after which temporary possession of the land must cease (either by the permanent acquisition of that land or the giving up of possession by the undertaker).</p>	<p>Marathon consider the TP power is too open ended. Please see Marathon's response to ExQ1 CA1.29 for a full response on this point.</p>
<p>CA.1.43</p>	<p>Objections to Compulsory Acquisition and Temporary Possession Powers</p> <p>In respect of Marathon Asset Management MCAP Global Finance (UK) LLP, please clarify whether rights which are proposed to be acquired over Plot 1/062 would have a material impact on the future redevelopment of the land?</p>	<p>Plot 1/062 is proposed to be land subject to Permanent Acquisition of Rights and temporary possession powers. Subject to detailed design, Plot 1/062 is anticipated to be required for to facilitate the construction of the surface access roads (Work No. 37) and permanent rights may be required for the purposes of accessing and maintaining utility assets.</p> <p>The Applicant will work with Marathon Asset Management MCAP Global Finance (UK) LLP to mitigate the impact on to Plot 1/062. If</p>	<p>Marathon would highlight that Plot 1/062 sits outside of the Longbridge Roundabout works package boundary. The GAL response states that permanent rights may be required for the purposes of accessing and maintaining utilities assets. GAL have failed to demonstrate that permanent rights need to be acquired over Plot 1/062.</p> <p>Please see Marathon's Post CAH1 Submissions for further details of Marathon's concerns and what information Marathon considers GAL should provide to enable a proper understanding of the position in relation to Plot 1/062 and also the proposed CPO</p>

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		the area is only required as a temporary construction area, it is anticipated that the acquisition of rights will not have a material impact on the future redevelopment of the land.	land take/rights to be acquired over Marathon's property generally.
NV1.8	<p>Description and Character of Aviation Noise</p> <p>Paragraph 5.52 of the ANPS states that the noise assessment should include a description of the noise sources and the characteristics of the existing noise environment, including noise from aircraft. ES Appendix 14.9.3 on Ground Noise Modelling [APP-173] presents sound power levels for taxiing aircraft.</p> <p>At 3.1.2 it says "<i>The calculated sound power levels for each aircraft type are presented in octave bands at Table 3.1.1 below. It should be noted that due to difficulties with accurately measuring in the 31.5 Hz octave band, calculated levels in the 63 Hz band have been assumed to be representative of levels in the 31.5 Hz band</i>".</p>	<p>a) Sound power has been calculated in line with methodology from the Madrid airport study (as noted at para 2.2.1 of ES Appendix 14.9.3 Ground Noise Modelling [APP-173]) which derives sound power levels by reverse implementation of the ISO9613-2 methodology to predict sound power based on measured levels at a known distance. The methodology in ISO9613 includes formulae for deriving ground attenuation and tables of atmospheric attenuation in octave bands. All the formulae and tables start from the 63 Hz octave band which makes it difficult to apply the methodology below this frequency band.</p> <p>Furthermore, during the measurements, there were greater levels of ambient sounds from other sources across the airport in the low frequencies and even in the 63 Hz band, the signal to noise ratio was significantly reduced for a lot of the aircraft pass-bys measured. For the measurements with better signal to noise ratio in the low frequencies, it was observed that noise in the 31.5 Hz octave band was generally the same as, or lower than, that in the 63 Hz octave band. The assumption that noise in the 63 Hz octave band is representative of</p>	Marathon note GAL's responses and have ongoing concerns with the noise assessment work in relation to Marathon's Holiday Inn Hotel as raised in Compulsory Acquisition Hearing 1 and summarised in the CAH1 post-hearing submissions.

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	<p>a) Can the Applicant explain the difficulties with measuring and justify this assumption?</p> <p>b) Can the Applicant confirm that: i. This assumption only applies to ground noise? ii. Air noise is modelled using the complete audible sound spectrum based on traceable and verifiable information?</p> <p>c) Can the Applicant provide the noise source sound power values for aircraft used in the modelling, as octave band or more granular information, either with reference to an application document, an additional submission or other publicly accessible source over the normal range of operation for those aircraft?</p>	<p>noise in the 31.5 Hz octave band is conservative, ensuring that noise in this frequency band is taken into account and is not underestimated at residential receptors.</p> <p>b) i) Yes, this assumption only applies to ground noise. ii) Yes, air noise is modelled using the complete audible sound spectrum based on traceable and verifiable information.</p> <p>c) Air noise was modelled with the latest version of the Aircraft Noise Contour Model (ANCON) (v2.4). A full description of modelling assumptions can be found in Environmental Research and Consultancy Department (ERCD) Report. The Environmental Research and Consultancy Department of the Civil Aviation Authority (or as was) has been producing noise contours for Gatwick airport using the ANCON model since 1988 including annual contours every year. Up until 2015 the contours were produced for the DfT, and since then they have been carried out for GAL. ERCD has a team who maintain the model and calibrate it for Gatwick Airport using thousands of data points measured at the Noise and Track Keeping Noise Monitoring Terminals around the airport. Measurements of SEL and Lmax levels are captured, in all cases A-weighted, to allow the full audible spectrum of aircraft noise to be modelled. The model uses Noise Power Distance curves specific to each aircraft type to define the decay of A weighted</p>	
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		noise level over distance so as to ensure frequency dependent distance attenuation is used specific to each aircraft type.	
NV1.20	Construction Noise and Vibration The CoCP [REP1-021] includes various topic-based Annexes [APP-083 to APP-087]. The Applicant is asked to consider including a noise and vibration management plan as an Annex	As explained in the noise and vibration section of the CoCP [APP-082], the Section 61 applications to be made by the contractor once the final methods of working are available, to be agreed with the local planning authority, will in effect become site specific noise management plans at that time. Accordingly, it is not considered that a further noise and vibration management plan to re-explain the information in that section of the CoCP is required.	Marathon note GAL's responses and have ongoing concerns with the noise assessment work in relation to Marathon's Holiday Inn Hotel as raised in Compulsory Acquisition Hearing 1 and summarised in the post-hearing notes.