



Gatwick Airport Northern Runway Project

Response to the Examining Authority's Written Questions
(ExQ2) – 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 the Development Consent Order and Control Documents.

ExQ1 Question to: Question:		
DEVELOPMENT CONSENT ORDER AND CONTROL DOCUMENTS		
Please note: all references to the draft Development Consent Order (dDCO) and the Explanatory Memorandum (EM) are to the versions submitted at D5 [REP5-005 and REP5-007] respectively unless otherwise indicated.		
DCO.2.1	Local Authorities Applicant	<p>Art. 2 (Interpretation) Definition of commencement</p> <p>The SoCGs between the Applicant and Surrey County Council (SCC) [REP5-051] and between the Applicant and West Sussex County Council (WSCC) [REP5-055] describe discussions in respect of the definition of commencement as under discussion.</p> <p>The local authorities are asked to clarify their current position with particular reference to which of the items (a) to (o) are still in dispute.</p> <p>The Applicant is asked to provide specific reasons for the inclusion of items (a) to (o).</p>
		<p>Paragraphs 3.4.1 to 3.4.4 of the Explanatory Memorandum to the Draft Development Consent Order [REP6-007] explain the rationale and justification for the definition of 'commence' in article 2 of the draft Development Consent Order [REP6-005], which apply equally to each of the activities in sub-paragraphs (a) to (o) of the definition. In particular, the activities specified in the definition are all preceded by at least one of the Sizewell C (article 2), Manston Airport (article 2) or M25 J28 (article 2) DCOs or align with emerging drafting submitted in the draft London Luton Airport Expansion DCO (Schedule 2, Part 1). The only bespoke provision is sub-paragraph (n)</p>

		<p>(establishment of temporary haul roads), which has been included as a separate limb for clarity, though the stated activity falls within the scope of other more generally worded exceptions from 'commence' in precedent DCOs (e.g. 'construction of temporary structures').</p> <p>The Applicant has had regard to the Government's recent updated guidance on the contents of a DCO – <i>Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects</i> (April 2024) in preparing subsequent updates to the dDCO and notes in respect of this definition:</p> <p><i>“Commencement” is a key definition in a DCO as the authorised development cannot legally commence until all pre-commencement requirements have been discharged. For this reason, having received development consent, developers may seek to carry out site surveys and some preliminary works without formally “commencing” the authorised development, while working through the process of discharging pre-commencement requirements. To do this, DCOs normally contain a definition of commencement which allows for specified preliminary works that will not be considered a material operation which begins the development in accordance with section 155 of the Planning Act.</i></p> <p><i>The definition of commencement must not provide for preliminary works which are so extensive that they would be likely to have significant environmental effects themselves, and would normally need consideration and approval by the discharging authority prior to such works starting. Typical examples of matters which are not acceptable preliminary works include major earthworks, clearance of trees and ground clearing, activities affecting protected species or archaeological remains, unless appropriate controls are secured in another manner.”</i></p> <p>In cognisance of the second paragraph and the specific reference to appropriate controls being needed to justify the inclusion of certain activities in the definition, the Applicant has been deliberate in ensuring appropriate mitigation/control documents are applicable to <u>all activities</u> under the DCO, including the preliminary works excluded from the definition of 'commence' in sub-paragraphs (a) to (o).</p>
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		<p>All <u>pre-commencement activities</u> will be subject to the Code of Construction Practice (Doc Ref. 5.3) (CoCP) and its associated management plans (see requirement 7); in respect of archaeology, ES Appendix 7.8.1: Written Schemes of Investigation for Surrey [REP2-017] and West Sussex [APP-106] (see requirement 14); the ES Appendix 5.4.2: Carbon Action Plan [APP-091] (see requirement 21) and the ES Appendix 11.9.6: Flood Resilience Statement [REP6-052] (Annex 6) (see requirement 24). Where relevant kinds of works are to be carried out, the need for a construction dust management plan (see requirement 27), soil management plan (see requirement 29) or arboricultural and vegetation method statement (see requirement 28) would be triggered.</p> <p>To take each activity in turn:</p>						
		<table border="1"> <thead> <tr> <th data-bbox="526 619 1243 678">Activity excepted from 'commence'</th> <th data-bbox="1243 619 1957 678">Explanation and/or key controls</th> </tr> </thead> <tbody> <tr> <td data-bbox="526 678 1243 853">(a) remedial work in respect of any contamination or adverse ground conditions</td> <td data-bbox="1243 678 1957 853">This is required, and controlled by, requirement 9 (contaminated land and groundwater), which provides for local planning authority and Environment Agency involvement.</td> </tr> <tr> <td data-bbox="526 853 1243 1294">(b) environmental (including archaeological) surveys and investigation</td> <td data-bbox="1243 853 1957 1294">Requirement 14 (archaeological remains) applies to pre-commencement activities and requires compliance with ES Appendix 7.8.1: Written Scheme of Investigation for Surrey [REP2-017] and ES Appendix 7.8.2: Written Scheme of Investigation for West Sussex [APP-106] for archaeological investigations. Pre-construction surveys are also subject to the CoCP (per requirement 7), including sections 4.3 and 5.4.</td> </tr> </tbody> </table>	Activity excepted from 'commence'	Explanation and/or key controls	(a) remedial work in respect of any contamination or adverse ground conditions	This is required, and controlled by, requirement 9 (contaminated land and groundwater), which provides for local planning authority and Environment Agency involvement.	(b) environmental (including archaeological) surveys and investigation	Requirement 14 (archaeological remains) applies to pre-commencement activities and requires compliance with ES Appendix 7.8.1: Written Scheme of Investigation for Surrey [REP2-017] and ES Appendix 7.8.2: Written Scheme of Investigation for West Sussex [APP-106] for archaeological investigations. Pre-construction surveys are also subject to the CoCP (per requirement 7), including sections 4.3 and 5.4.
Activity excepted from 'commence'	Explanation and/or key controls							
(a) remedial work in respect of any contamination or adverse ground conditions	This is required, and controlled by, requirement 9 (contaminated land and groundwater), which provides for local planning authority and Environment Agency involvement.							
(b) environmental (including archaeological) surveys and investigation	Requirement 14 (archaeological remains) applies to pre-commencement activities and requires compliance with ES Appendix 7.8.1: Written Scheme of Investigation for Surrey [REP2-017] and ES Appendix 7.8.2: Written Scheme of Investigation for West Sussex [APP-106] for archaeological investigations. Pre-construction surveys are also subject to the CoCP (per requirement 7), including sections 4.3 and 5.4.							

		(c) investigations for the purpose of assessing ground conditions	Similarly to the above, investigations are subject to requirement 9 (contaminated land and groundwater), requirement 14 (archaeological remains) and requirement 7 (code of construction practice).
		(d) site or soil surveys	Subject to requirement 7 (code of construction practice) and, where soil is to be removed, the requirement for a soil management plan (requirement 29).
		(e) erection of fencing to site boundaries or marking out of site boundaries	Controlled by the CoCP (per requirement 7), including sections 4.5.9, 4.6.3, 4.6.4 and 4.9.9.
		(f) removal of hedgerows, trees and shrubs	Article 25 (felling or lopping of trees and removal of hedgerows) applies to such activities. Further, an arboricultural and vegetation method statement must be submitted for approval under requirement 28 prior to any vegetation or tree clearance.
		(g) installation of amphibian and reptile fencing	Controlled by the CoCP (per requirement 7) and specifically the annexed Outline Reptile Mitigation Strategy [REP5-067].
		(h) diversion or laying of services	Subject to the CoCP (per requirement 7) and the protective provisions for electricity, gas, water and sewage undertakers and for operators of electronic communications code networks in Schedule 9 of the dDCO.

		(i) ecological mitigation measures	Subject to the suite of control documents detailed above – most relevantly requirements 7 (code of construction practice), 28 (arboricultural and vegetation method statement) and 29 (soil management plan).
		(j) receipt and erection of construction plant and equipment	Subject to the CoCP (per requirement 7), including the working hours in section 4.2.
		(k) erection of temporary buildings and structures	Subject to the CoCP (per requirement 7), including the controls on temporary construction compounds (where the vast majority of any temporary buildings and structures are anticipated to be erected) in section 4.5 and the new drafting for any other temporary buildings and structures added at Deadline 7 in paragraph 4.5.11.
		(l) site preparation and site clearance	Subject to requirements 7 (code of construction practice), 28 (arboricultural and vegetation method statement) and 29 (soil management plan).
		(m) establishment of construction compounds	Subject to the CoCP (per requirement 7), including the controls and height limits in section 4.5.
		(n) establishment of temporary haul roads	Subject to the CoCP (per requirement 7), including the new specific drafting added at Deadline 7 in paragraph 4.5.12.

		(o) temporary display of site notices, advertisements or information	Subject to the CoCP (per requirement 7), including new specific drafting added at Deadline 7 in section 5.8.3.
		<p>The aggregate effect of these control documents ensures there is no 'gap' in control or oversight of those preliminary works, and any necessary corresponding mitigation for the works is in place.</p> <p>The description of the activities themselves are self-explanatory and their corresponding relevance to the construction of the authorised development similarly self-evident, and the Applicant does not consider there is specific additional reason/explanation that could be added in their respect that isn't otherwise covered above.</p> <p>It is understood that the JLAs have a particular concern regarding the inclusion of limbs (k) and (m), the erection of temporary buildings and structures and establishment of construction compounds respectively and have indicated their request for the deletion of such limbs. The Applicant has clarified that the removal of these activities from the definition of 'commence' would not mean that the activities cannot be carried out or otherwise provide any correlative 'approval' right to the JLAs in their respect. Rather, it would simply mean that the activity would instead trigger the requirement to discharge other 'commencement' related requirements, which the Applicant does not consider have any necessary relevance to those preliminary activities. All necessary controls in their respect are detailed in the above table.</p> <p>It is hoped that the above additional explanation will address any residual concerns that remain from the JLAs in respect of the drafting approach in this definition and, to the extent any such concerns remain, the Applicant would query why they aren't in fact a concern with the control documents rather than the definition of 'commence'.</p>	
DCO.2.2	Local Authorities	Art. 2 (Interpretation) Definition of maintain The local authorities previously raised a concern about the definition of maintain [AS-029].	

		<p>Do the local authorities still have a concern about the listed actions in this definition? If so, explain what changes would be required.</p>
		<p>N/A – this question is not directed at the Applicant.</p>
DCO.2.3	Local Authorities	<p>Art. 3 (Development consent etc granted by the Order)</p> <p>The SoCG between the Applicant and SCC [REP5-051] and between the Applicant and WSCC [REP5-055] describe discussions in respect of the term ‘<i>adjacent to the Order limits</i>’ as under discussion.</p> <p>In the light of the Applicant’s comments in paragraphs 4.1 and 4.2 of the EM [REP5-007] the local authorities are asked to explain any outstanding concerns.</p>
		<p>N/A – this question is not directed at the Applicant.</p>
DCO.2.4	Applicant	<p>Art. 6 (Limits of Works)</p> <p>Art. 6(3) of the dDCO seeks to ensure that the maximum heights on the parameter plans are not exceeded. Why are heights only subject to this control and not other dimensions such as width and depths?</p> <p>Amend Schedule 13 to include these other dimensions and provide further justification for the heights being ‘<i>informative</i>’ or exclude this term.</p>
		<p><u>Controls on widths and depths</u></p> <p>Article 6(1) requires that each numbered work is situated within the lateral limits (i.e. width and depth) of the corresponding numbered area shown on the Works Plans [REP6-009]. These plans constrain the outer bounds of the lateral location and size of each numbered work and ensure that its detailed design, once progressed, will remain within the <i>Rochdale</i> envelope assessed as part of the Applicant's Environmental Statement. The parameters secured through article 6 (limits of</p>

		<p>works), the Works Plans [REP6-009] and the Parameter Plans [REP6-011] reflect the 'worst-case' envelopes that formed the basis of the Applicant's Environmental Impact Assessment and are therefore appropriate maximum dimensions to be secured.</p> <p>Specific provision is made for the surface access works in article 6(2) to reflect that there is, in practice, no bright-line distinction between Work Nos. 35, 36 and 37 where they interface and in article 6(4)(b) by reference to the 'Surface Access Works Lateral Limits' shown on the Parameter Plans [REP6-011].</p> <p><u>Schedule 13</u></p> <p>As explained above, article 6 – by reference to the Works Plans [REP6-009] and, for the surface access works, the 'Surface Access Works Lateral Limits' on the Parameter Plans [REP6-011] – secures the maximum lateral extents of each numbered work. This is the clearest and most appropriate form of securing these limits and the contents of these plans cannot easily be transferred into tabular form.</p> <p>As indicated at ISH 8 (see paragraph 2.2.15 of the Applicant's Written Summary of Oral Submissions – ISH8 – Draft DCO [REP6-083]), Schedule 13, which records height restrictions, is informative and the Parameter Plans [REP6-011] are the primary source of the height restrictions to which the authorised development is subject. This reflects that for some numbered works there is not a single height restriction for the whole work area or there are areas within the numbered area on the relevant Work Plan that are not subject to the height restriction (e.g. due to existing structures).</p> <p>By way of example, the drawing ending 990131 (e-page 25 of the Parameter Plans [REP6-011]) shows varying height restrictions across the work area for Work No. 43 (water treatment works), to reflect the significantly varying ground level in this area. It would be difficult and potentially confusing to translate these varying height restrictions into tabular form and the visualisation in the Parameter Plans [REP6-011] is considered vastly more useful for discharging authorities and contractors who will need to apply these restrictions. The informative table records the range of</p>
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		<p>height restrictions for this work and includes a footnote to refer to the Parameter Plans [REP6-011] for the specific geographical extent of each limit.</p> <p>In version 9 of the dDCO submitted at Deadline 7 (Doc Ref. 2.1 v9), the Applicant has added an obligation to submit a 'compliance statement' when it submits design or drainage details for consultation with the relevant local authority or for approval in the case of listed works (under requirements 4 and 10). This statement will set out how the Applicant's submitted details comply with the parameters secured by article 6 (limits of works) and will therefore assist the discharging authorities carry out their review function in this regard.</p>
DCO.2.5	Applicant	<p>Art. 8 (Consent to transfer benefit of Order)</p> <p>Art. 8(4)(b). Include '<i>office areas</i>' after Work Numbers (Work Nos.) 10(g) for consistency?</p> <p>As drafted in the dDCO [REP6-005], article 8(4)(b) states "<i>in relation to a transfer or a grant relating to any part of Work Nos. 10(h), 11(d) (office and welfare facilities), 16 (new aircraft hangar), 26, 27, 28 or 29 (hotels), any registered company.</i>" For clarity, 'office and welfare facilities' is included in the brackets after '11(d)' in the article as a descriptor for both Work Nos. 10(h) and 11(d) in the same way as '(hotels)' is included as applicable to each of Work Nos. 26 to 29 in the same subparagraph to that article. The Applicant does not consider a drafting change is needed on that basis; however, should the ExA disagree and prefer the edit to be made then the Applicant will be happy to address following receipt of the ExA's proposed schedule of changes to the dDCO in advance of Deadline 9.</p> <p>The Applicant has relatedly amended article 8(4)(b) of the dDCO (Doc Ref 2.1) at Deadline 7 to clarify that Work No. 28(b) is the construction of an office and 28(a) is the construction of a hotel.</p>
DCO.2.6	Applicant	<p>Art. 9 (Planning permission)</p>

	<p>Local Authorities</p>	<p>In respect of Art. 9(4) the Applicant has stated that no prescribed mechanism is required as regards potential incompatibility under this sub-paragraph [REP5-037].</p> <p>The Applicant is requested to provide further justification for the inclusion of this sub-paragraph and any precedent for it.</p> <p>The local authorities are asked to confirm and explain whether any modifications to the sub-paragraph could be made to make it acceptable or whether they wish to see its removal.</p> <p>In respect of Art. 9(5) the Applicant and the local authorities are invited to expand on their positions as set out during ISH8.</p> <hr/> <p><u>Article 9(4)</u></p> <p>Article 9(4) provides that any condition of a planning permission granted prior to the date of the Order that is incompatible with the requirements of the Order or the authorised development shall cease to have effect from the date the authorised development is commenced.</p> <p>As noted previously (see e.g. paragraph 4.1.24 of the Applicant's Written Summary of Oral Submissions from ISH 2: Control Documents / DCO [REP1-057]), other than the existing conditions regarding the use of the northern runway pursuant to the 1979 planning permission (ref. CR/125/79) that are currently applicable to the Airport (i.e. condition 3 limiting it to emergency use only and condition 4 regarding the existing western noise mitigation bund), the Applicant is not aware of any other planning conditions (through its own investigations, or from submissions made by the JLAs to date) that would be impacted by article 9(4). The Applicant has expressed this same position in response to the JLAs previously, who have suggested that if that is the case, then the wording of the article should be narrowed to instead only address the specific 'incompatible' condition applicable to the use of the northern runway.</p> <p>Whilst that is an option, the Applicant would submit that it is better to retain the 'failsafe' effect of the article as drafted to deal with the (admittedly unlikely) scenario where either the Applicant or one of the JLAs become aware of the existence of a planning permission with a condition that is otherwise</p>
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		<p>incompatible with a requirement under the dDCO or the authorised development more generally and that could otherwise then create difficulties for the on-going implementation of/compliance with that historic permission in terms of <i>Hillside</i> for the reasons explained in paragraphs 4.31 to 4.41 of the Explanatory Memorandum [REP6-007].</p> <p>The Applicant also considers its drafting approach to be preferable as such 'incompatibility' with any historic condition would necessarily only occur where specific alternative provision on the same matter had been included in the dDCO (so causing the inconsistency). The existence of a historic planning permission by itself doesn't lead to an incompatibility and so trigger article 9(4) – it is only where there is a condition which due to its wording has such inconsistency with the dDCO and/or the authorised development. In those circumstances, it must surely follow that it is preferable for the DCO's terms to have primacy in respect of that incompatibility, but for the rest of the terms of that historic planning permission to otherwise continue. In such circumstance there would be no 'gap' in terms of controls or mitigation.</p> <p>Article 9(4) is materially the same in effect as article 56(3) in the draft Lower Thames Crossing DCO, which provides that to the extent that compliance with any conditions of a planning permission is inconsistent with the exercise of any power, right or obligation under the Order, no enforcement action may be taken under the 1990 Act in relation to compliance with those conditions.</p> <p>The Applicant does, however, appreciate the importance of the JLAs' development management and planning enforcement responsibilities and so, in an effort to provide some comfort and clarity in relation to the scope and effect of this clause, the Applicant has provided additional wording in version 9.0 of the dDCO submitted at Deadline 7 (Doc Ref. 2.1 v9) which obliges the Applicant, where it identifies an incompatibility between a condition of a planning permission and the Order that engages paragraph (4), to notify the relevant planning authority as soon as reasonably practicable about the existence of the incompatibility.</p>
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		<p><u>Article 9(5)</u></p> <p>Article 9(5) provides that the Order does not prevent persons from seeking or implementing separate planning permission (including pursuant to permitted development rights) for development within the Order limits.</p> <p>This provision merely expressly states the existing position at law (in order to make this clear in light of <i>Hillside</i>), that the grant of a DCO for an area does not sterilise that area from any future grant of planning permission or use of permitted development rights.</p> <p>There is precedent for such a provision: article 6(2) of the A66 Northern Trans-Pennine Development Consent Order 2024 provides that "<i>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</i>", 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.</p> <p>The Applicant has commented on the JLAs' position that article 9(5) should be amended so as to remove the Applicant's permitted development rights on a broad and untargeted basis across the Project site at row 6 of its Response to the Local Impact Reports - Appendix C - Response to DCO Drafting Comments [REP3-081] and in response to DCO.1.21 in its Response to Deadline 4 Submissions [REP5-072]. The Applicant continues to strongly resist this.</p> <p>The Applicant understands from the JLAs' Post-Hearing submission on agenda item 8: Draft Development Consent Order [REP6-110] that the JLAs' primary concerns underlying their position relate to potential development on Museum Field, Pentagon Field and the reed beds (i.e. Work No. 43) (particularly car parking on those sites) and development of further car parking across the airport more broadly. In respect of the former, the Applicant has added new article 9(7) in version 9.0 of the dDCO submitted at Deadline 7 (Doc Ref. 2.1 v9) in an effort to provide comfort to the JLAs, which provides that:</p>
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	<p><i>(7) The undertaker must not exercise the permitted development right in Class F of Schedule 2 to the 2015 Regulations for—</i></p> <p><i>(a) any development on the areas labelled Work No. 38 (habitat enhancement area and flood compensation area at Museum Field) or Work No. 43 (water treatment works) on the works plans; or</i></p> <p><i>(b) any development of car parking on the area labelled Work No. 41 (ecological area at Pentagon Field) on the works plans.</i></p> <p>The Applicant wishes to preserve its ability to carry out potential non-car parking development on Pentagon Field in future as this site has been identified as potentially suitable for development such as solar panels, provided that such development could be carried out in compliance with any LEMP approved for that area (to which the Applicant would be bound under requirement 8 of the dDCO). To confirm, there is no such development currently anticipated and this is simply provided as an illustrative example of the type of development which could conceivably come forward outside of, but complementary to, the Project authorised development. In that context, the Applicant does not consider it appropriate to further limit its development potential in line with its existing permitted development rights.</p> <p>In relation to car parking across the wider site, the Applicant considers there is no justification for a more general, site-wide, removal of permitted development rights for on-airport car parking given the effective controls/provisions of the Surface Access Commitments [REP6-030] which require the Applicant to maintain and enhance sustainable mode shares through the use of a toolkit of measures, including parking controls and pricing.</p> <p>As detailed in the Applicant’s Written Summary of Oral Submissions - ISH 8 Car Parking [REP6-079], the Applicant considers that its approach of managing airport parking within a wider sustainable surface access strategy is appropriate and enables the Applicant to respond flexibly to ensure there is no “under-supply” of car parking which could lead to detrimental effects off-airport (for example, fly parking issues) whilst ensuring the mode share commitments are met and it has set up a framework of measures to support that approach.</p>
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		<p>The Applicant has a historic record of consistently achieving high sustainable mode shares (which Crawley Borough Council has acknowledged previously in the context of car parking appeals with which the Applicant has engaged) whilst simultaneously bringing forward car parking. In addition, the Applicant included additional provisions in Commitment 8A of the Surface Access Commitments [REP6-030] submitted at Deadline 6 which are consistent with the approach in the existing 2022 Section 106 Agreement and which require the Applicant to provide no more additional on-airport public car parking spaces than necessary to achieve a combined on and off airport supply that is consistent with the mode share commitments.</p> <p>The Applicant has sought to address specific concerns raised by the JLAs in respect of individual areas within the Order limits (Museum Field and Pentagon Field) in terms of the potential use of permitted development rights to bring forward car-parking. To the extent there are further concerns regarding particular sites/areas, then the Applicant is happy to consider them; however, it does not consider there is any evidence or justification to support a more general disapplication of its permitted development rights across the airport.</p> <p>For completeness, paragraphs 4.37 to 4.41 of the Explanatory Memorandum [REP6-007] describe other extant and emerging precedent for the Applicant's drafting in article 9. To the extent further precedent emerges in the course of this examination, the Applicant will reflect on such drafting and update the dDCO and ExM where appropriate/necessary.</p>
DCO.2.7	Applicant Local Authorities	<p>Art. 10 (Application of the 1991 Act)</p> <p>The SoCG between the Applicant and SCC [REP5-051] indicates that the Applicant is considering the implications of the highway authority's permit scheme.</p> <p>The Applicant and the local authorities are asked to provide an update on discussions on this matter and should its incorporation within Art.10 not be possible, the Applicant is to provide its reasons.</p>

		<p>The Applicant has met with Surrey and West Surrey County Councils to discuss their respective permit schemes. The Applicant is keen to work positively with the authorities to minimise traffic disruption during construction of the relevant works and considers that incorporating the permit schemes into the dDCO would be a positive step towards helping the authorities meet their strategic objectives.</p> <p>The Applicant has included new drafting in article 10 (application of the 1991 Act) of the dDCO submitted at Deadline 7 (Doc Ref. 2.9 v9) which incorporates the following permit schemes made under Part 3 of the Traffic Management Act 2004:</p> <p>(a) the Traffic Management (Surrey County Council) Permit Scheme Order 2015 (as varied); and (b) the West Sussex County Council Permit Scheme Order 2016 (as varied).</p> <p>This amendment confirms that the above permit schemes apply and will be used by the Applicant in connection with the construction and maintenance of the authorised development, subject to the qualifications concerning the conditions which can be imposed on a permit and the resolution of disputes (which reflect the standard drafting of precedent DCOs including the M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022 and Southampton to London Pipeline Development Consent Order 2020).</p> <p>The Applicant therefore considers this matter to be resolved.</p>
DCO.2.8	Applicant	<p>Art. 11 (Street works)</p> <p>The Applicant is asked to provide a schedule of the streets affected by Art.11 in lieu of '<i>any of the streets as are within the Order limits</i>'.</p> <p>The Applicant is also asked why Art 11(1) is not 'subject to the consent of the street authority'?</p>

		<p><u>Schedule of streets</u></p> <p>The Applicant has previously set out why it does not consider it necessary to include a schedule of streets to which article 11 applies, including in response to DCO.1.22 in the Applicant’s Response to ExQ1: Development Consent Order and Control Document [REP3-089].</p> <p>To supplement that explanation, at this stage of detailed design the Applicant does not yet know in which streets it will need to carry out street works. It cannot therefore provide a schedule of streets for which article 11 will <i>definitively</i> be required. If the Applicant were to prepare and include a schedule, it would therefore have to list <u>all</u> streets within the Order limits, which would be of limited benefit to any interested party.</p> <p>If the Applicant were to add such a list of streets to the dDCO, the scope and effect of article 11 would remain the same as presently (given that it currently applies to <i>"any of the streets as are within the Order limits"</i>). If the JLAs had concerns about the power applying to particular streets, they would raise these and the Applicant would consider removing them from the schedule. However, the JLAs can already raise such specific concerns by reference to the various plans submitted with the Application, from which the JLAs can see the streets that fall within the Order limits. The JLAs can raise such concerns and the Applicant can make specific provision in article 11 (if justified) to carve these streets out of the power – thereby achieving the same outcome. The Applicant has flagged the need for the JLAs to communicate any concerns about particular streets in e.g. its Response to Deadline 4 Submissions [REP5-072] and various of the SoCGs with the JLAs and to date has not been made aware of any such concerns.</p> <p><u>Street authority consent</u></p> <p>Article 11 is targeted at works to utilities apparatus in or under streets, as can be seen from the list in article 11(1). Such works have little lasting effect on the use of the streets in question and therefore should not require street authority consent in the same manner as, for example, article 12 (power to alter layout, etc., of streets) which authorises more significant works. Further, to the extent that streets (other than those within the airport) need to be temporarily closed for the carrying out of the authorised development, article 14(4) (temporary closure of streets) provides that this can</p>
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		<p>only be undertaken with street authority consent. No amendment to article 11 to provide for street authority consent is therefore required, nor is it (so far as the Applicant is aware) currently requested by the JLAs.</p> <p>The Applicant's drafting for article 11 is preceded as described in paragraph 5.11 of the Explanatory Memorandum [REP6-007].</p>
DCO.2.9	Applicant Local Authorities	<p>Art. 12 (Power to alter layout, etc. of streets)</p> <p>The Applicant's position is that deeming provisions (included in Art.12(4) and elsewhere) are justified and appropriate [REP3-081]. The local authorities wish to see all deeming provisions removed from the DCO.</p> <p>The parties are requested first to identify any way in which deeming provisions could be modified in a way which may be acceptable to either party and secondly, if agreement cannot be reached, their final position in respect of a deeming provision.</p> <hr/> <p>The Applicant does not propose to repeat its previous submissions as to the justification for the deeming provisions within the dDCO, with paragraphs 8.28 to 8.32 of the Explanatory Memorandum [REP6-007] setting out the principal rationale and justification for their inclusion and further specific comment provided in row 9 of the Applicant's Response to the Local Impact Reports - Appendix C - Response to DCO Drafting Comments [REP3-081] as the ExA's question notes.</p> <p>The Applicant maintains those submissions and does not consider there to be a modification possible to the deeming provisions which preserves their effect and which would otherwise alleviate the JLAs' previously submitted concerns (which go to the principle of deeming provisions more generally).</p> <p>However, it is understood that the principal element of their concern in relation to the deeming provisions is additional wording regulating the provision of 'consent' in relevant</p>

		<p>articles/requirements to the dDCO which also provide for the relevant authority's consent '<i>not to be unreasonably withheld or delayed</i>' (for example, and relevant to this question, article 12(3)). The concern is understood to be that it is not reasonable to include provision for 'unreasonable delay' in circumstances where there is also a deeming provision. The Applicant does not agree that the two provisions are incompatible as it is readily conceivable that there could still be unreasonable delay in providing a consent within the 56-day period allocated for a decision to be reached, notwithstanding the prospect of a deemed consent following at the end of that period. However, the Applicant is content to make that change and delete the provision regarding 'unreasonable delay' from the relevant drafting in order to address the JLAs' concerns and allow the deeming provisions to otherwise be included in the DCO. The Applicant has done so in version 9.0 of the dDCO submitted at Deadline 7 (Doc Ref. 2.1 v9).</p>
DCO.2.10	Applicant Local Authorities	<p>Art. 14 (Temporary closure of streets)</p> <p>The Applicant is asked to consider whether Art. 14(1) should be amended to specify the streets affected in a Schedule. If not, why not?</p> <p>The Applicant and local authorities are asked to provide further justification for their respective positions in respect of the local authorities' suggested additional sub-paragraph after Art. 14(5) as set out in AS-029.</p> <p>The Applicant does not consider it necessary to specify streets to which article 14 applies in a schedule because the exercise of this power is subject to the consent of the street authority in paragraph (4)(a) and the street authority can therefore scrutinise the streets over which the Applicant proposes to exercise the power on a case-by-case basis.</p> <p>In respect of the latter point, following discussions between the Applicant and the JLAs the Applicant added new paragraph (4)(b) in version 8 of the dDCO submitted at Deadline 6 [REP6-005] which implements the drafting requested by the JLAs.</p>

DCO.2.11	Applicant	<p>Art. 22 (Discharge of water)</p> <p>Thames Water states that there has been a change of wording from the standard wording from ‘<i>construction</i>’ to ‘<i>carrying out</i>’. It indicates that this new phrasing creates unnecessary ambiguity and may lead to the inclusion of the operation of the development which Thames Water would object to.</p> <p>Explain why non-standard wording has been included.</p> <hr/> <p>The Applicant does not agree that the wording of article 22 is a departure from standard wording and it is unclear to the Applicant on what basis the alternative wording referenced by Thames Water was considered to be ‘standard’.</p> <p>This element of article 22 as currently drafted accords with article 14 of the Model Articles, which states: <i>“The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project...”</i>. Further, the Applicant’s drafting mirrors that in many made DCOs including article 15 of the Hornsea Four Offshore Wind Farm Order 2023, article 19 of the A57 Link Roads Development Consent Order 2022 and article 16 of the Manston Airport Development Consent Order 2022.</p> <p>The above was communicated to Thames Water in bilateral discussions on the drafting of the dDCO and the Applicant understands that Thames Water no longer maintains any objection to the drafting of article 22.</p>
DCO.2.12	Applicant Local Authorities	<p>Art. 25 (Felling or lopping of trees and removal of hedgerows)</p> <p>Department for Levelling Up, Housing and Communities (DLUHC) ‘<i>Guidance on the content of a DCO required for a Nationally Significant Infrastructure Project</i>’ (April 2024) states that applicants may wish to include an article to allow the removal of hedgerows without the need to first secure consent under the Hedgerows Regulations 1997. It states that such an article can either refer to the</p>

		<p>specific hedgerows intended for removal described clearly in a Schedule or drafted to include powers for general removal of hedgerows subject to appropriate controls and mitigation being included.</p> <p>Should there be a schedule referencing specific hedgerows? Does Art. 25 provide appropriate controls and mitigation? If not, what additions should be made to the article?</p> <p>The Applicant notes the recent DLUHC guidance cited by the ExA, which is similar in content to <i>Nationally Significant Infrastructure Projects - Advice Note Fifteen: drafting Development Consent Orders</i> (July 2018) on this point. However, it is noted in particular that the new guidance states that a power for general removal of hedgerows may be included "<i>subject to appropriate controls and mitigation being included</i>" rather than needing to be subject to the later consent of the local authority, as was stated in <i>Advice Note Fifteen</i>.</p> <p>The weight of precedent in recently made DCOs is for articles that authorise the removal of hedgerows within the Order limits without separate local authority consent and without reference to a specific schedule of hedgerows. For example, article 17(6) of the A66 Northern Trans-Pennine Development Consent Order 2024, article 31(4) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024 and article 34(4) of the Manston Airport Development Consent Order 2022 all take this approach and authorise the removal of any hedgerow within the Order limits.</p> <p>The Applicant's article 25 offers greater protection than these precedents in that it provides that the undertaker may only lop or remove a hedgerow if it reasonably believes it to be necessary to prevent the hedgerow from obstructing or interfering with the construction, maintenance or operation of the authorised development or related apparatus, or to prevent an imminent danger to persons or property, rather than the broader precedented wording that the removal is "<i>required</i>".</p> <p>The Applicant's article 25 also offers the largely unprecedented protection that works must be carried out in accordance with British Standard 3998:2010 (Tree work – Recommendation), as</p>
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		<p>previously requested by the JLAs, and includes the standard entitlement to compensation should persons suffer loss or damage from the works authorised by the article.</p> <p>Additionally, as per requirement 28, an arboricultural and vegetation method statement must be submitted for approval before any 'tree or vegetation clearance' is carried out. This provides an additional control – with approval – prior to the clearance of any hedgerows.</p> <p>In light of the above considerations, the Applicant considers that article 25 (alongside requirement 28) provides appropriate controls and mitigation for the inclusion of a general power for removal of hedgerows within the Order limits. This is further supported by the fact that the Applicant has not identified any 'important hedgerows' (as per the meaning in the Hedgerows Regulations 1997) that will be affected by the authorised development.</p>
DCO.2.13	National Highways Local Authorities	<p>Art. 27 (Compulsory acquisition of land)</p> <p>The Applicant and NH disagree about the inclusion of 'use' within Art. 27.</p> <p>What specific change would NH wish to see in this article and why?</p> <p>Is the inclusion of 'construction, operation and maintenance in Art. 27(1) necessary/ appropriate?</p>
		N/A – this question is not directed at the Applicant.
DCO.2.14	Applicant IPs Applicant	<p>Art 31 (Time limit for exercise of authority to acquire land compulsorily)</p> <p>The Applicant is seeking to exercise its powers to acquire land or interests within 10 years beginning on the start date.</p> <p>Is there a precedent for the inclusion of the 'start date' within Art. 31?</p>

		<p>As both the time period and use of the start date rather than the date on which the Order is made are uncommon features of made DCOs, is there a potential compromise between the time period and exercising of the authority?</p> <p>The equivalent article 21 of the Manston Airport Development Consent Order 2022 utilises a 'start date' defined in the same way the Applicant has proposed in its equivalent definition, by reference to the later of the expiry of the period for legal challenge under section 118 of the Planning Act 2008 or the final determination of any such legal challenge. In addition, article 26 of the draft London Luton Airport Expansion DCO and article 27 of the draft Lower Thames Crossing DCO each use the same definition in the same way in their equivalent articles. Accordingly, the Applicant considers there to be existing and emerging precedent for the use of the term in this article 31 (and within the corresponding article 38 (time limit for exercise of authority to temporarily use land for carrying out the authorised development) and requirement 3 (time limit and notifications)) and the Applicant has explained in the corresponding paragraphs 7.18, 7.49 and 9.13 to the Explanatory Memorandum [REP6-007] the specific justification for its use in this Application's DCO.</p> <p>Relatedly, the Applicant has explained in previous submissions (e.g. its Response to ExQ1 [REP3-089], DCO.1.29) and at paragraphs 7.19 and 7.49 of the Explanatory Memorandum [REP6-007] the justification for the ten year period sought in respect of the exercise of the compulsory acquisition powers under the DCO – primarily to enable the use of temporary powers to enable the construction of the authorised development and only exercise permanent compulsory acquisition powers by exception and proportionately to the final area of land necessary post construction. A forced exercise of compulsory acquisition powers earlier in the construction programme would give rise to the potential for a less discriminate approach to the acquisition so as to preserve necessary flexibility and not inhibit the ability to deliver the Project. The Applicant considers ten years to be justifiable and preferable; however, to the extent it would serve to alleviate the JLAs' concerns, it is content to reduce this term to seven years after the 'start date'. The Applicant has made this</p>
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		amendment in version 9.0 of the dDCO submitted at Deadline 7 (Doc Ref. 2.1 v9) as a compromise as invited in this question.
DCO.2.15	Applicant	<p>Art. 40 (Special category land)</p> <p>The Applicant is asked to explain why the vesting of the open space land in the undertaker should not wait until a scheme for the provision of replacement land as open space has been implemented.</p>
		<p>The Applicant refers to section 3.2 of its Note on Acquisition of Special Category Land and Provision of Replacement Land [REP4-041] which explains the necessity for, legality of and precedent for the Applicant's approach in this regard.</p>
DCO.2.16	Applicant	<p>Art 49 (Defence to proceedings in respect of statutory nuisance)</p> <p>The Statement of Statutory Nuisance [APP-265] cites various types of statutory nuisance and provides the Applicant's justification for their inclusion in Art. 49. The SoCG with CBC states that the Applicant is <i>'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'</i>.</p> <p>The Applicant is asked to provide further justification for its position and specifically for all of the sub-sections of section 79(1) of the Environmental Protection Act which the local authorities object to.</p>
		<p>For the reasons set out in response to DCO.1.37 in the Applicant's Response to ExQ1 [REP3-089] and in the Applicant's 'Updated position (April 2024)' in row 2.7.1.7 of the Statement of Common Ground with Crawley Borough Council [REP5-037] cited by the ExA, the Applicant respectfully considers that the JLAs' concerns with article 49 are based on a misunderstanding of</p>

		<p>its effect and the relationship between article 49 and section 158 of the Planning Act 2008. The Applicant reiterates the submissions made in those cited documents.</p> <p>Section 158 of the Planning Act 2008 provides general statutory authority for carrying out development for which consent is granted by a DCO and doing anything else authorised by a DCO, so as to provide a defence to any civil or criminal proceedings for nuisance. This is a general and broad defence which the Applicant can avail itself of, subject to any contrary provision in the DCO. Article 49 is such contrary provision and, therefore, including limbs of statutory nuisance within article 49 reduces the types of nuisance to which the general defence in section 158 applies because, for those types of nuisance, article 49 applies instead. Therefore, the JLAs' request that provisions be removed from article 49 appears to the Applicant contrary to the JLAs' stated goal of tightening standards for the Applicant.</p>
DCO.2.17	Applicant	<p>Schedule 1 (Authorised development) <u>Work Nos. 26, 27, 28 and 29</u></p> <p>On what basis is parking to be provided at the hotels and how would this relate to CBC's policies in relation to parking. Accordingly, justify why these Work Nos. should not specify the number of hotel bedrooms and the number of parking spaces.</p> <hr/> <p>There is no parking provision proposed for the hotels forming part of the Project and covered by Work Nos. 26, 27, 28 and 29 as part of the dDCO (Doc Ref. 2.1) (save for parking provision for disabled users and servicing). The multi-storey car park included as Work No. 28(c) is proposed on the existing Car Park H, together with the other development specified in Work No. 28(a, b, d and e) including a new hotel (referred to as the 'Car Park H hotel'). However, the proposed multi-storey Car Park H (Work No. 28(c)) is not proposed in connection with the Car Park H hotel (Work No. 28(a)). The multi-storey Car Park H is proposed to accommodate air-passenger car parking to replace the existing car parking permanently lost by the Project, as set out in Table 5.2.3 of ES Chapter 5: Project Description [REP6-013].</p>

		<p>For the reasons set out above in response to DCO.2.6, and as explained further at paragraph 2.2.5 of The Applicant's Written Summary of Oral Submissions - ISH8 - Draft DCO [REP6-083] and paragraph 2.1.4 of the The Applicant's Response to Actions ISH8 - Draft DCO [REP6-089], the Applicant does not consider it necessary to specify numbers of car parking spaces for each proposed carpark as it considers these matters are adequately controlled by the Design Principles (Doc Ref. 7.3), Works Plans (Doc Ref. 4.5), Parameter Plans (Doc Ref. 4.7) and the Surface Access Commitments (Doc Ref. 5.3).</p> <p>Similarly, the Applicant does not consider it necessary to specify a number of hotel bedrooms/bedspaces in the work descriptions for Work Nos. 26, 27, 28(c) and 29, which are the proposed hotels. All numbered works are limited in lateral extent by the Works Plans (Doc Ref. 4.5). Save for Work No. 29 (converting the existing Destinations Place office into a hotel), which is the conversion of an existing building, the three new hotel buildings are also constrained by height parameters in the Parameter Plans (Doc Ref. 4.7). These maximum constraints (secured through article 6 (limits of works) of the dDCO) represent the worst-case '<i>Rochdale</i> envelope' that was assessed in the Applicant's Environmental Statement. How the hotels are built out within that envelope, and therefore the exact number of rooms that they will comprise, is a matter for detailed design and should not be prescribed by the work descriptions in the dDCO.</p> <p>In any event, the proposed <i>new</i> hotels (Work Nos. 26, 27 and 28(a)) are works listed in Schedule 12 (non-highway works for which detailed design approval is required) and will be subject to detailed design approval by CBC under DCO requirement 4(4). Prior to submission of detailed design approval, these works will also be subject to an independent review by a Design Adviser as detailed in Annex A of the Design Principles (Doc Ref. 7.3).</p>
DCO.2.18	Applicant	<p>Schedule 1 (Authorised development)</p> <p>Various Work Nos. use the term '<i>approximately</i>' eg Work Nos. 30, 31, 35-38 and 41.</p>

		<p>Why should the more precise wording of ‘<i>no less than</i>’ as used in Work No. 40 not be used in each case?</p> <p>In response to ExQ2 DCO.2.18, the application has amended the description of Work No. 41 (ecological area at Pentagon Field) in Schedule 1 of the dDCO (Doc Ref. 2.1) to replace ‘approximately’ with ‘no less than’.</p> <p>The Applicant has not made the requested change to the remaining referenced Work Nos. for the reasons stated below:</p> <ul style="list-style-type: none"> ▪ Work Nos. 30(a), 31(b) and 38(a) – in these cases, the use of the word ‘approximately’ relates to the volumes of flood compensation areas and attenuation storage. These works have been designed to a (conservative) feasibility level and will be subject to more detailed analysis through the detailed design process that could result in the required storage volumes being refined (and potentially reducing). The works will be designed to achieve the same objective, namely to ensure that there is no increase in flood risk to other parties. ▪ Work Nos. 35 to 37 – for these works, the use of the word ‘approximately’ indicates lengths of new and revised roads as part of the proposed South Terminal, North Terminal and Longbridge Roundabout junction improvements. At the detailed design stage, the surface access highway works will be subject to further design development within the horizontal and vertical limits of deviation set out in article 6 (limits of works) of the dDCO (Doc Ref. 2.1). As part of this design development, changes to the position and size of junctions and / or refinements to the horizontal or vertical alignments of a given road may result in minor reductions (or increases) in lengths of the highway assets. Changing the word ‘approximately’ to ‘no less than’ for these Work Nos. would introduce an arbitrary restriction on the detailed design which may restrict the ability of the Project to deliver solutions that would be accepted by the relevant highway authorities in accordance with the detailed design approval process described in requirements 5 (local highway works – detailed design) and 6 (national highway
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		works) of the dDCO (Doc Ref. 2.1). It should also be noted that the drafting (using 'approximately') adopted in the dDCO is similar to drafting in recent DCOs brought forward by National Highways, including in the A417 Missing Link Development Consent Order 2022 and the draft Lower Thames Crossing DCO.
DCO.2.19	Local Authorities	<p>Schedule 2 (Requirements)</p> <p><u>R3 Time limit and notifications</u></p> <p>The Legal Partnership Authorities have stated that the timeframes under R3(2) are not long enough [REP2-042].</p> <p>What time periods would be acceptable to the local authorities? Justify your position.</p>
		N/A – this question is not directed at the Applicant.
DCO.2.20	Applicant National Highways	<p>Schedule 2 (Requirements)</p> <p><u>R6 National highway works</u></p> <p>The Applicant and NH are engaging on the matter of reference to a <i>'provisional certificate'</i> which is not defined in the main body of the DCO or Schedule 2.</p> <p>As the term is used in Requirement (R) 6(3) why can it not be defined? Is there a relevant precedent for the definition of terms. NH may wish to comment.</p>
		<p>Whilst 'provisional certificate' is not defined in the main body of the DCO or Schedule 2, the wording of sub-paragraph (3) to requirement 6 contextualises its term by noting "...<i>an application to National Highways for a provisional certificate pursuant to paragraph 8 of Part 3 of Schedule 9...</i>" (emphasis added), and such term is defined in the protective provisions for National Highways contained in that Part 3 of Schedule 9 to the dDCO (Doc Ref 2.1). For completeness, the term is defined as "<i>the</i></p>

		<p><i>certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 8 when it considers the specified works are substantially complete and may be opened for traffic".</i></p> <p>The Applicant considers this existing wording to be clear and is not aware of National Highways having any concern on the framing of this element of the requirement; however, should the ExA consider it to be preferable, the Applicant would be content for an appropriate cross-reference to that defined term to be included in Schedule 2, e.g. "<i>provisional certificate</i>" has the same meaning as in paragraph 2(2) of Part 3 of Schedule 9 of this Order". The Applicant will await the ExA's comment/direction in its schedule of changes to the draft DCO if considered appropriate.</p>
DCO.2.21	Applicant	<p>Schedule 2 (Requirements)</p> <p>Explain how operational odour management and monitoring would be secured. The Applicant's response to AQ.08 in section 3.11 of its Response to LIRs [REP3-078] indicates that this would be through a draft AQAP forming an Appendix to the Code of Construction Practice (CoCP).</p> <p>Why is this not covered by a separate requirement in the DCO in the same way as construction dust (R27) for example?</p> <p>As set out in The Applicant's Response to Deadline 4 Submissions submitted at Deadline 6 [REP6-090] the odour assessment carried out followed the recommended approach from the Institute of Air Quality Management (IAQM) and concluded that there are no significant effects from odour as a result of the Project.</p> <p>An operational odour management and monitoring plan is therefore not required. As part of the standard operational practice of the airport any complaints regarding odour would be reviewed and addressed. The Applicant is already committing to an extended monitoring network onsite which will</p>

		<p>be highly beneficial for understanding the changes in emissions across the airport and which will also be valuable for any analysis of complaints. The data will give the airport additional information on the activities and emissions occurring onsite which can, where necessary, feed back into operational management procedures.</p> <p>The Applicant has prepared an Odour Reporting Process Technical Note (Doc Ref. 10.57) to clarify any remaining questions around odour. The Applicant has submitted this technical note at Deadline 7.</p>
DCO.2.22	Applicant	<p>Schedule 7 (Land in which only new rights etc. may be acquired) The ExA notes the Applicant’s response to ExQ1 CA.1.38 in respect of Schedule 7 of the dDCO [REP3-087].</p> <p>Nevertheless, the ExA maintains the position that it would be helpful if Schedule 7 could be further populated with additional detail. Reference is drawn to The Sizewell C and Drax Bioenergy with Carbon Capture and Storage Project made Orders. Additionally, both final draft versions of the Lower Thames Crossing and London Luton Airport Expansion Development Consent Orders contain additional detail in their equivalent, relevant Schedules.</p> <p>Additionally, it was noted by the ExA in CAH1 ([EV14-001] and [EV14-002]) that when National Highways (NH) referred to a specific plot within Schedule 7, the Applicant verbally provided additional detail to that currently contained within Schedule 7.</p> <p>Schedule 7 has been updated in version 9.0 of the dDCO submitted at Deadline 7 (Doc Ref. 2.1 v9) to provide additional detail.</p>
DCO.2.23	Applicant Local Authorities	<p>Schedule 11 (Procedures for approvals, consents and appeals) Schedule 11 provides for the payment of fees in respect of a requirement.</p>

	<p>The Applicant is asked to clarify why paragraph 3(2) of Schedule 11 provides for the repayment of any fee paid to the discharging authority within 35 days of (a) the application is rejected as invalidly made or (b) the authority not determining the application within the determination period when the discharging authority will have incurred costs.</p> <p>The Applicant is additionally asked to explain why this provision should not apply to other consents addressed within the dDCO. Further detail beyond that contained within section 2.7.1.10 of the SoCG between the Applicant and CBC is required [REP5-037].</p> <p>The Local Authorities are asked to confirm what they would consider an acceptable quantum of fee.</p> <hr/> <p>The Applicant is open to discussing a PPA with the JLAs in lieu of the drafting currently included in Schedule 11 and is awaiting details on scope and value from the JLAs.</p> <p>Pending a resolution of those discussions, the Applicant maintains that the current drafting is appropriate. As set out in paragraph 9.80 of the Explanatory Memorandum [REP6-007], the Applicant's approach to fees for discharging authorities is well precedented in made DCOs.</p> <p>Equivalent drafting to paragraph 3(2) features in each of the precedents cited in paragraph 9.80 of the Explanatory Memorandum [REP6-007]. The discharging authority will be able to determine quickly whether an application has been "<i>invalidly made</i>", which does not require the full substantive assessment and consultation process that may be needed to determine whether to grant or refuse an application (and through which the fees would be expected to be incurred). In such circumstance, it is right that the fee is returned (or credited for a future application).</p> <p>It is similarly right that the fee is returned if the discharging authority does not determine the application within the decision period specified in the dDCO (Doc Ref 2.1). Such period is included to ensure that discharging requirements does not delay the progress of construction. If a</p>
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		<p>discharging authority does not comply with this, it should not retain the fee. This accords with wider Government policy in the form of the 'Planning Guarantee' detailed in the December 2023 update to the Planning Practice Guidance, whereby planning application fees must be refunded to applicants where no decision has been made within a specified time.</p> <p>In relation to the query on other consents within the DCO, by the addition of drafting in article 56 (deemed consent) in version 9.0 of the dDCO submitted at Deadline 7 (Doc Ref. 2.1 v9), the specified fee has been extended to also apply to applications for consent or approval pursuant to the articles of the dDCO, as well as the discharge of requirements.</p>
DCO.2.24	Applicant	<p>Mitigation Route Map/ Register of Environmental Actions and Commitments</p> <p>At D4 [REP4-062] the Legal Partnership Authorities commented on the Applicant's response to ExQ1 DCO.1.6. The Authorities indicated that they would like to see the development of the Route Map from its current form into a Register of Environmental Actions and Commitments (REAC) document.</p> <p>The Applicant is asked to produce a REAC which is a common feature of other DCO applications or explain why this should not be done.</p> <p>The Applicant is reviewing the request for a Register of Environmental Actions and Commitments (REAC) and will seek to submit a copy at Deadline 8.</p>
DCO.2.25	Applicant	<p>Approach to Securing Mitigation</p> <p>At D4 [REP4-062] the Legal Partnership Authorities commented on the Applicant's response to ExQ1 DCO.1.45. The Authorities' position is that the CoCP should be considered an overarching construction management plan that sets out the principles for the construction of the Project. The CoCP should be an outline document that sets out specific management plans the Applicant should</p>

		<p>prepare. The CEMP approach could then be adopted for each individual stage/works number, to provide the relevant suite of construction information to inform the mitigation required during construction for distinct geographical areas.</p> <p>Why would this approach not be a suitable way of addressing the local authorities' concerns?</p>
		<p>The Applicant considers that the Code of Construction Practice (CoCP) (Doc Ref. 5.3), including its accompanying Annexes [APP-082 – APP-087], is a comprehensive document, which sets out the management systems and measures that would be in place during the construction of the Project, as secured under requirements 7, 12 to 13 and 27 to 30 of the dDCO (Doc Ref. 2.1). The CoCP describes where further management plans are to be prepared regarding specific construction or environmental measures and to be submitted for approval by the relevant discharging authority prior to the commencement of the relevant construction works.</p> <p>As explained in response to DCO.1.45 in the Applicant's response to the ExA's Written Questions (ExQ1) – Development Consent Order and Control Documents [REP3-089], a Construction Environmental Management Plan (CEMP) is limited to environmental management measures whereas the CoCP includes but is not limited to procedures and measures on non-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].</p> <p>As noted in ExQ2 DCO.2.26, the Applicant has responded to the JLAs' Deadline 3 Responses to ExQ1 DCO.1.46 [REP3-135] submitted at Deadline 4, namely in Table 2.5 of The Applicant's Response to Deadline 3 Submissions [REP4-031]. In that response, the Applicant has demonstrated that the matters raised in the JLAs' response to ExQ1 DCO.1.46 are covered by the existing CoCP. This again demonstrates that the document is sufficiently detailed in setting out the comprehensive suite of procedures and measures that will be in place during the Project's construction to manage and minimise disturbance from construction activities.</p>

		<p>The Applicant notes that, at Deadline 6, the Legal Partnership Authorities' Response to ExQ1 – Development Consent Order and Control Documents [REP6-104] states in response that the JLAs “remain concerned regarding the sufficiency of content and the level of detail provided in the CoCP” but have not substantiated their remaining concerns. As such, the Applicant will await the Local Authorities response to ExQ2 DCO.2.26 to be able to understand any outstanding concerns or requests that may have on the CoCP.</p>
DCO.2.26	Local Authorities	<p>Status of Code of Construction Practice</p> <p>At D5 [REP5-072] the Applicant responded to the Legal Partnership Authorities’ response in respect of ExQ1 DCO.1.46 [REP3-135 and REP4-062]. The Applicant’s position is that the CoCP and its Annexes cover the items listed in the JLA’s response to DCO.1.46.</p> <p>The local authorities are asked if there are any issues identified in its response to DCO.1.46 which are not addressed in the CoCP or its Annexes and if so, what additional information is required and how should it be secured?</p>
		<p>N/A – this question is not directed at the Applicant.</p>
DCO.2.27	Applicant	<p>Draft Section 106 Agreement</p> <p>At D1 [REP1-057] the Applicant stated that when it submitted the draft Section 106 Agreement at D2 [REP2-004], it would also submit a comparison document showing the relationship between existing and proposed obligations, with appropriate commentary.</p> <p>Can the Applicant signpost to where this document has been provided and/or provide an update at D7.</p>

		<p>A comparison showing the relationship between the existing and proposed s106 agreements was submitted in response to Action Point 1 from ISH3 to the Applicant's Response to Actions – ISHs 2-5 [REP2-005] and in the associated Appendix A.</p> <p>The Applicant has prepared an updated version of Appendix A to the Applicant's Response to Actions – ISHs 2-5 (Doc Ref 10.9.7 v2) which reflects the draft DCO s106 Agreement submitted at Deadline 6 [REP6-063].</p>
DCO.2.28	Applicant	<p>Draft Section 106 Agreement</p> <p>Section 6 of Schedule 3 of the draft Section 106 Agreement [REP2-004] lists the restrictions on the Povey Cross Access. It does not mention pedestrian or cycle access. The ExA understands why public access may not be desirable here, but staff who live locally being able to use this access may considerably reduce their journey times to the airport.</p> <p>Does this section need to be amended to allow controlled access for pedestrians and cyclists?</p> <p>At present there is no physical restriction on pedestrians and cyclists using the Povey Cross Access (the access is barrier controlled but is not securely gated and it is not physically impossible for cyclists (or pedestrians) to pass the barrier). However, there are no measures in place to encourage this active travel (i.e. there is currently no footway or cycleway) and the Applicant is not intending to make such provision as part of the Project.</p> <p>The Applicant is proposing to amend para 4.1 of Schedule 3 of the draft DCO s106 Agreement [REP6-063] to “GAL shall restrict the use <u>by motor vehicles</u> of the Povey Cross Access to...”. The JLAs have confirmed that the proposed amendment to paragraph 4.1 to include the words “by motor vehicles” is acceptable.</p>