



Gatwick Airport Northern Runway Project

The Applicant's Response to Actions
CAH2: Compulsory Acquisition

Book 10

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1 Introduction

1.1.1 This document provides the Applicant's response to the actions arising from Compulsory Acquisition Hearing (CAH) 2. The actions relevant to the Applicant are as follows:

Action No.	Action	Deadline
1	Discussions to continue with JLAs in respect of proportionate land take.	Deadline 8
2	To resolve/discuss Gatwick Green (GG) point re public footpath/byway in plot 4/463 with GG and NH, and also with GG in respect of work no 35 (Works associated with the South Terminal Junction improvements) and the extent of Article 27 (b).	Deadline 8
3	Justification/reasons as to why the red line boundary is drawn tightly around the eastern edge of Work no 43 (Works to construct water treatment works, comprising a constructed wetland (reed bed) treatment system including the creation of reed beds and associated facilities, cabin, storage unit and the reprovision of car parking) but there is a much bigger boundary to the west of the works. Justification also regarding the same issue on Work No 41 (Works to create an ecological area at Pentagon Field).	Deadline 8
4	Provide an update to the Third Change Application Report [REP7-097].	Deadline 8
5	To submit a status of negotiations document - a general summary document detailing the number of option agreements which have been signed and exchanged, the number of legal	Deadline 9

	<p>agreements which are being finalised and exchange expected shortly, right through to sites where legal agreement has started but little progress. Reference can be made to look at the Portishead Branch Line (TR040011) schedule as a guide (Portishead Examination Library reference [REP7-063]).</p> <p>For the Statutory Undertakers section, the document should give a list of those Statutory Undertakers where agreement has been reached in terms of protective provisions whether using standard wording or where bespoke wording has been agreed.</p> <p>Where the wording for bespoke protective provisions hasn't been agreed, the document should list out the outstanding issues, provide details of the negotiations to date, dates of communications and confirm the wording of the protective provision the Applicant considers suitable.</p> <p>Where no response has been received in respect of protective provisions, the document should detail what attempts to engage have been carried out and why it is considered that the standard provisions provide adequate protection to both assets and rights.</p> <p>Regarding Crown Land, provide details in respect of progress regarding Crown consent in the document. Detail should include what the issue or issues are to date and if consent is likely to be forthcoming before the end of the Examination.</p>	
6	Where bespoke wording for protective provisions hasn't been agreed, Statutory Undertakers to produce a similar document to Action Point 5 above which provides detail as	Deadline 9

	<p>to why bespoke protective provisions are necessary and to provide the wording which would be considered appropriate in two sets: firstly the wording that the Statutory Undertakers would find acceptable and to also provide a track change version against the Applicant's suggested wording.</p> <p>To the Applicant – please lead on this/notify the Statutory Undertakers of this request.</p>	
7	<p>Submit final versions of additional bespoke Protective Provisions for the following:</p> <ul style="list-style-type: none"> • Esso Petroleum • National Highways • UKPN • South-Eastern Power Networks PLC • Southern Gas Networks PLC • Thames Water Utilities Ltd - Network Rail 	Deadline 8
8	<p>JLAs to respond on whether Protective Provisions for the Local Lead Flood Authorities are required in the dDCO or whether each consent will be applied for during the detailed design stage post DCO.</p>	Deadline 8
9	<p>Set out how the Proposed Development could go ahead if Crown consent were not to be granted.</p>	Deadline 8
10	<p>Confirm how compensatory figure for Category 3 persons is calculated.</p>	Deadline 8
11	<p>To consider and confirm how the situation would be dealt with and secured if listed</p>	Deadline 8

	building consent for noise mitigation is refused and any subsequent appeal dismissed.	
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- 1.1.2 The sections below provide the Applicant's response. For actions which require a more detailed response, a reference to the appropriate document is included.

2 Action Point 1

2.1.1 **The Examining Authority has asked for discussions to continue with the JLAs in respect of proportionate land take. The following response is provided.**

- 2.1.2 The Applicant has contacted the JLAs to further understand their concerns in relation to the powers sought over the adopted local highway and the specific plots which were referred to generally at the hearing.

- 2.1.3 The local highway authorities (LHAs) raised a concern at CAH2 that an authority should not be "forced" to adopt land and take on the associated liabilities and statutory duties. To confirm, this could not happen under the DCO as drafted. The LHAs are protected by Article 21 which prevents GAL commencing any works in the local highway until the LHA has entered into an A21 Agreement (s278/s38 agreement) with it. Under Article 21(2)(c) this explicitly includes provision for the matters included within a section 38 agreement (power of highway authorities to adopt by agreement). Therefore any works on highway land which may transfer to a LHA will be subject to an Article 21 agreement as it will tie into the local highway. This effectively gives the LHAs the veto it is seeking. A limitation on GAL's ability to exercise its CA powers would not provide any additional protection to the LHAs in this context.

- 2.1.4 The Applicant understands that the LHAs wish for a mirror of the provisions provided for the benefit of National Highways in Part 3, Schedule 9 of the **draft DCO** (Doc Ref. 2.1 v10). The Applicant does not consider that the same arrangement would be appropriate with the LHAs. In addition to the protective provisions on the face of the order, the Applicant has a framework agreement in place with National Highways which reflects the high level of collaboration required for the scale of the works proposed on the Strategic Road Network.

- 2.1.5 The Applicant and the LHAs have taken an alternative approach ever since the application was submitted which is reflected in Article 21 of the **draft DCO** (Doc Ref. 2.1 v10). The LHAs have established systems and agreements for developers to follow when carrying out these types of works and the Applicant has always accepted that it would follow these systems and has indeed confirmed that it will use the LHAs template s278/38 Agreements subject to updates required by the DCO, as opposed to creating a bespoke system and relationship for the works carried out under the DCO.
- 2.1.6 The Applicant does not accept that the powers that it is seeking over the highway land which may transfer to a different highway authority are disproportionate and maintains that these powers are necessary and proportionate. The Applicant has demonstrated the detailed and proportionate approach it has taken in its application for CA powers over highway land (see the Applicant's response to ExQ2 CA.2.4 in the **Applicant's Response to ExQ2 - Compulsory Acquisition and Temporary Possession** [[REP7-080](#)]) and considers that the LHAs are adequately protected; and specifically protected against the concern that they raised at the hearings.
- 2.1.7 At CAH2 the JLAs suggested that some of the plots of land shown on the **Land Plans** [[REP7-017](#)] did not reflect the local highway boundary; the Applicant confirmed that the Land Plans were prepared on the basis of the information available to it but confirmed it would welcome any further information. The Applicant has sought this information and the JLAs have confirmed that this was in reference to an alternative approach to the protective provisions which were sought. Therefore the Applicant understands that the JLAs have no further comments on the Land Plans and does not consider any changes to the plots of land shown on the Land Plans are necessary in response.

3 Action Point 2

- 3.1.1 **The Examining Authority has asked the Applicant to resolve/discuss Gatwick Green (GG) point re public footpath/byway in plot 4/463 with GG and NH, and also with GG in respect of work no 35 (Works associated with the South Terminal Junction improvements) and the extent of Article 27 (b). The following response is provided.**
- 3.1.2 The Applicant and GG have reached an in-principle agreement and have had continuing discussions since the hearing on the outstanding points of detail. In relation to the public footpath/byway in plot 4/463 and the land required for Work

No. 35, the Applicant has provided further information to GG and a meeting with GG, National Highways and the Applicant has been arranged for 12 August.

- 3.1.3 In relation to the extent of Article 27(1)(b), this makes clear that the undertaker can use land acquired compulsorily pursuant to article 27(1)(a) for the purposes authorised by the Order (i.e. the Project) or for other purposes in connection with or ancillary to the undertaker's undertaking (i.e. the operation etc. of the airport). The Applicant considers it uncontroversial that it should be authorised to use land that is compulsorily acquired pursuant to the Order powers for the above purposes.
- 3.1.4 The wording is precedented – including in article 28(1)(b) of the Sizewell C (Nuclear Generating Station) Order 2022, article 24(1)(b) of the Hinkley Point C (Nuclear Generating Station) Order 2013 and in materially the same form in e.g. article 19(1) of the Drax Power (Generating Stations) Order 2019 and article 18(1) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022.
- 3.1.5 It is further noted that numerous Transport and Works Act orders employ the same wording in a transport context – see e.g. article 18 of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023 and article 4 of the Network Rail (Cambridge Re-Signalling) Order 2024.

4 Action Point 3

- 4.1.1 **The Examining Authority has asked the Applicant to provide justification/reasons as to why the red line boundary is drawn tightly around the eastern edge of Work no 43 (Works to construct water treatment works, comprising a constructed wetland (reed bed) treatment system including the creation of reed beds and associated facilities, cabin, storage unit and the reprovision of car parking) but there is a much bigger boundary to the west of the works. Justification also regarding the same issue on Work No 41 (Works to create an ecological area at Pentagon Field). The following response is provided.**
- 4.1.2 The Order Limits closely follow the boundary of Work Nos. 41 and 43 to the east as these form part of the Project proposals. No works are proposed further east or south of these work areas, hence are excluded from the Order Limits. This approach is not dissimilar to the boundary line in the north, south and west of the Order Limits which also closely follow the boundary of different Work Areas.

- 4.1.3 The area within the Project boundaries to the north of Work No. 43 and west of Work No. 41 are subject to the Project proposals, such as new pumping stations and foul water pipelines.

5 Action Point 4

- 5.1.1 **The Examining Authority has asked the Applicant to provide an update to the Third Change Application Report [REP7-097]. The following response is provided.**

- 5.1.2 The Applicant has prepared and submitted an updated version of the **Third Change Application Report** (Doc Ref. 10.60) at Deadline 8 which confirms that the Applicant is not seeking additional compulsory acquisition powers over the small amount of additional land proposed to be included in the Order Limits as a result of the Third Change Application.

6 Action Point 7

- 6.1.1 **The Examining Authority has asked the Applicant to submit final versions of additional bespoke Protective Provisions for the following:**

- **Esso Petroleum**
- **National Highways**
- **UKPN**
- **South-Eastern Power Networks PLC**

The following response is provided.

- 6.1.2 In summary, the following protective provisions have been submitted with the **draft DCO** (Doc Ref. 2.1 v10) at Deadline 8:
- National Highways – agreed;
 - Network Rail – not agreed;
 - Southern Gas Networks – agreed;
 - Thames Water Utilities Limited – not agreed; and
 - Esso Petroleum Company Limited – not agreed.

- 6.1.3 Further detail on the current status of negotiations with the statutory undertakers who have responded to the Applicant's correspondence regarding protective provisions and the draft Order is as follows and will be supplemented in the full 'Status of Negotiations' document requested by the ExA for Deadline 9:
- 6.1.4 **National Highways:** a Framework Agreement has been agreed with National Highways and the version of the protective provisions for their benefit currently included in the **draft DCO** (Doc Ref. 2.1 v10) has been updated at Deadline 8 to reflect the terms of that agreement. These provisions are in agreed form, save for paragraph 18 (indemnity). In respect of that paragraph, the parties have been unable to reach agreement on the inclusion of an indemnity cap and have therefore 'agreed to disagree' and will put their respective submissions on the appropriate drafting for that paragraph before the examination as part of the 'Status of Negotiations' document to be provided at Deadline 9 so that the ExA, and ultimately the Secretary of State, can decide which drafting is to be preferred.
- 6.1.5 **Network Rail:** bespoke protective provisions and a Framework Agreement are under negotiations and drafts are well-advanced, with many issues resolved. However, agreement has not yet been reached on a few drafting points. The Applicant has therefore included its preferred form of drafting for the Network Rail protective provisions in the **draft DCO** (Doc Ref. 2.1 v10) at Deadline 8. The Applicant will continue discussions with Network Rail with the aim of reaching agreement prior to Deadline 9 on the remaining outstanding points. If agreement is reached, the Applicant will update the protective provisions to reflect this at Deadline 9. If agreement is not reached, the Applicant will submit its detailed reasoning regarding points that remain outstanding for the ExA's and SoS' consideration.
- 6.1.6 **Southern Gas Networks:** negotiations are well-advanced between the parties on bespoke protective provisions and a Side Agreement. Both documents are in near-agreed form and are awaiting final sign-off and execution. Given the advanced stage of negotiations, the Applicant has added the near-agreed form protective provisions to the **draft DCO** (Doc Ref. 2.1 v10) at Deadline 8. The Applicant will provide a further update at Deadline 9 but does not anticipate requiring to amend the drafting of these protective provisions.
- 6.1.7 **Thames Water Utilities Limited:** negotiations are ongoing between the parties and many issues have been resolved. However, a number of drafting points remain not agreed. The Applicant has included its proposed form of drafting for the bespoke protective provisions in the **draft DCO** (Doc Ref. 2.1 v10) at

Deadline 8. The Applicant will continue discussions with TWUL with the aim of reaching agreement prior to Deadline 9 on the remaining outstanding points. If agreement is reached, the Applicant will update the protective provisions to reflect this at Deadline 9. If agreement is not reached, the Applicant will submit its detailed reasoning regarding points that remain outstanding for the ExA's and SoS' consideration.

- 6.1.8 UKPN (South Eastern Power Networks plc):** a Side Agreement has been agreed with UKPN and is subject to final sign-off and execution. Given the status of this agreement, which fully protects UKPN's position without the need for new provisions on the face of the Order, no protective provisions have been added in respect of UKPN at Deadline 8 and none are anticipated to be necessary.
- 6.1.9 Walton-Gatwick Pipeline Limited / BPA:** as per the letter dated 31 July 2024 from Fieldfisher LLP to the ExA, a Side Agreement between the Applicant and Walton-Gatwick Pipeline Limited / BPA was completed on 29 July 2024. As a result, no protective provisions are required to be added for this entity.
- 6.1.10 Esso Petroleum Company Limited:** the Applicant received Esso's standard form protective provisions in May 2024 and the Applicant's solicitors reached out to the instructed solicitors for Esso with proposed amendments to those provisions on 28 June 2024. The Applicant's solicitors followed this email up on 15 July 2024 and received a response requesting a fee undertaking on 18 July 2024. The Applicant's solicitors requested a clarification on the form of the undertaking requested on 19 July 2024 and followed this up on 23 July 2024, but no response has been received. The Applicant's solicitors sent a further email on 29 July 2024 noting their intention to submit their proposed amended version of Esso's standard protective provisions into the examination at Deadline 8 should no response be received. No response has been received to date and the Applicant has therefore submitted its proposed form of bespoke protective provisions for Esso in the **draft DCO** (Doc Ref. 2.1 v10) submitted at Deadline 8.

7 Action Point 9

- 7.1.1 The Examining Authority has asked the Applicant to set out how the Proposed Development could go ahead if Crown consent were not to be granted. The following response is provided.**
- 7.1.2 The Applicant notes that Action Point 4 to CAH1 requested a similar response from the Applicant in **Action Points arising from Compulsory Acquisition Hearing 1 (CAH1) on 2 May 2024** [[EV14-005](#)] as follows:

"To advise on the consequences of s135 consent not being confirmed before the end of the Examination with regard to the acquisition of rights over Crown land."

- 7.1.3 The Applicant's response is set out in response to Action Point 4 in **The Applicant's Response to Actions CAH1: Compulsory Acquisition** [[REP4-038](#)].

8 Action Point 10

- 8.1.1 **The Examining Authority has asked the Applicant to confirm how compensatory figure for Category 3 persons is calculated. The following response is provided.**

- 8.1.2 The basis for Part 1 claims under the Land Compensation, in this case due to noise, is that the homeowner has to demonstrate the loss of house value following opening of the Project (after 1-6 years). There is no firm way to predict this, and given the noise increases predicted are small, the Applicant does not expect substantial claims. However, in 2021, Southend Airport which had undergone substantial growth in air traffic due to a runway extension, agreed a number of claims at Tribunal (Upper Tribunal (Lands Chamber) Case Number LCA/65-255/2019). The ruling was based on house prices but also provided an indication of the LAeq16 hr and Leq8 hr noise level increases that had been experienced. Settlements of 2.5% of property value were awarded to properties with the lowest level of noise change broadly consistent with that expected in the worst affected areas from the Northern Runway Project. The Applicant took a cautious view of how many properties could potentially experience this level of noise change to give the cautious estimate of £4.4 million.

9 Action Point 11

- 9.1.1 **The Examining Authority has asked the Applicant to confirm how the situation would be dealt with and secured if listed building consent for noise mitigation is refused and any subsequent appeal dismissed. The following response is provided.**

- 9.1.2 The Applicant has noted in **ES Appendix 14.9.10 Noise Insulation Scheme** [[REP4-017](#)] that Listed Building Applications will be made by the Applicant on behalf of the homeowner, with the Applicant using a contractor to assess, design and help prepare / submit the application. The Noise Insulation Scheme refers to Historic England's guidance Energy Efficiency and Historic Buildings, Secondary Glazing for Windows, 2016 and it is expected that following this guidance

carefully and working closely with the local Conservation Officers, the necessary consents will be forthcoming. Indeed, it would be unlikely that a listed building application would be submitted until the support of the Conservation Officer has first been obtained.

- 9.1.3 In the unlikely event that Listed Building consent was refused, the Applicant would work with the Conservation Officer and the Planning Officer to re-submit an Application to specifically address the reason for refusal. However, if again unsuccessful or if necessary an appeal to the Planning Inspectorate could be initiated to consider the reason for refusal and ultimately decide whether the harm to the listed building outweighed the benefits of noise reduction to the occupiers. It is identified that this eventuality is really very highly unlikely given the scope of potential works and that those are regularly in respect of listed buildings of all grades of listing. Through working with the Conversation Officer(s) involved and the homeowner to agree what noise mitigation measures can be delivered to reduce noise impacts in line with the Noise Insulation Scheme commitments and which also are designed to ensure they adequately preserve the special qualities of the building which are the reason for its listing, it is considered highly unlikely that a satisfactory solution could not be found.