Gatwick Airport Northern Runway Project

The Applicant's Response to Deadline 7 Submissions Appendix A – The Applicant's Response to Submissions on the Draft Development Consent Order

Book 10

VERSION: 1.0

DATE: AUGUST 2024

Application Document Ref: 10.65

PINS Reference Number: TR020005

Table of Contents

1 The Applicant's Response to Deadline 7 Submissions on the Draft DCO

1.1 Purpose of this Document

1.1.1 This document has been prepared to set out the Applicant's response to comments on the Draft DCO received at Deadline 7. In particular, this document responds to the following Deadline 7 submissions by Interested Parties:

- Legal Partnership Authorities:
  - **Consolidated submissions on the draft Development Consent Order** [REP7-108]
  - **Responses to ExQ2** [REP7-110]
- CAGNE**:**
  - **Responses to ExQ2 and comments on Deadline 6 submissions** [REP7-129]
- National Highways:
  - **Responses to ExQ2** [REP7-115]

1.1.2 Alongside this document, the Applicant has made corresponding updates to application documents for submission at Deadline 8. The amended and new documents are:

- **Draft Development Consent Order** (Doc Ref. 2.1)
- **Draft Development Consent Order – Schedule of Changes** (Doc Ref. 2.1)
- **Explanatory Memorandum to the Draft Development Consent Order** (Doc Ref. 2.2)

1.2 Legal Partnership Authorities – Consolidated submissions on the draft Development Consent Order [REP7-108]

Part A: Response to the Applicant's Schedule of Changes to the dDCO at Deadline 6 [REP6-004]

This section sets out the Applicant's response to the points raised in Part A of the Legal Partnership Authorities' response [REP7-108] to the Applicant's **Schedule of Changes to the dDCO** [REP6-004] submitted at Deadline 6. Responses are only provided by exception where further comment from the Applicant is necessary.

Provision	JLA response	Applicant further comment
Article 14 (temporary closure of streets)	[…] the Authorities continue to ask that a list of streets to which the article applies be added as a separate Schedule.	Article 14(4)(a) provides that street authority consent is required before the power in article 14(1) is exercised. Hence, each proposal can be evaluated by the street authority when it is submitted for approval. The Applicant does not, therefore, consider there to be a need to list streets to which the article applies. The Applicant notes that this analysis has been accepted by the JLAs elsewhere, e.g. in their comments on article 11 (street works) in Part B of the same document [REP7-108] where they state that either a list of streets should be added or exercise of the article 11 power should be made subject to street authority consent.

		The Applicant responded to this point in its **Response to the Local Impact Reports - Appendix C - Response to DCO Drafting Comments** [REP3-081] and does not understand the JLAs to have addressed the point further, so was surprised to see this point in the JLAs' D7 submissions.
Article 56 (deemed consent)	[…] the Authorities' primary request was that the deeming provisions in various provisions of the DCO should be removed entirely and that if the ExA did not agree with that, then the Authorities ask was that "or delayed" be removed from the various obligations on them that approval should not be unreasonably withheld or delayed (eg in article 12(3)).)	The Applicant removed *"or delayed"* from the relevant articles in version 9 of the **draft DCO** submitted at Deadline 7 [REP7-005] in the expectation that this would satisfy the JLAs' concern regarding the deeming provisions. Having made this change, the Applicant hopes that the JLAs can confirm that they are now content for the deeming provisions to remain in the draft DCO. In any event, the Applicant maintains and reiterates its previous submissions regarding the justification and wealth of precedent in made DCOs for deeming provisions in response to DCO.2.9 of the Applicant's **Response to ExQ2** [REP7-081], paragraphs 8.28 to 8.32 of the **Explanatory Memorandum to the draft DCO** [REP7-007] and row 9 of the Applicant's **Response to the Local Impact Reports -**

		Appendix C - Response to DCO Drafting Comments [REP3-081].

Part B: Comments on the Applicant's Response to Actions ISH8 – Draft DCO [REP6-089] and the Applicant's Written Summary of Oral Submissions ISH8: Draft Develoment Consent Order [REP6-083]

1.2.1 This section sets out the Applicant's response to the points raised in Part B of the Legal Partnership Authorities' response [REP7-108] regarding the Applicant's **Written Summary of Oral Submissions ISH8 – Draft DCO** [REP6-083] and Applicant's **Response to Actions ISH8 – Draft DCO** [REP6-089] submitted at Deadline 6.

1.2.2 In relation to the JLAs' comments at paragraphs 2.10 – 2.19 on the need for an Odour Management and Monitoring Plan, the Applicant has responded on this topic to **Action Point 25** in the Applicant's **Response to Actions – ISH9 Mitigation** (Doc Ref. 10.63.2).

Part C: List of Proposed Amendments to the dDCO submitted by the Applicant at Deadline 6 [REP6-005]

1.2.3 This section sets out the Applicant's response to the points raised in Part C of the Legal Partnership Authorities' response [REP7-108] regarding its suggested amendments to the Draft DCO.

Part 1 – Amendments to Text of DCO

No.	Legal Partnership Authorities List of Amendments to the dDCO			The Applicant's Response
	Provision	Amended Text	Explanation	
1	Article 2(1) (interpretation)	**Alternative A** Delete from definition of "commence": ~~(k) erection of temporary buildings and structures~~ ~~(m) establishment of construction compounds~~ ~~(n) establishment of temporary haul roads~~ ~~(o) the temporary display of site notices, advertisements~~ **Alternative B** Insert the following new requirement: Pre-commencement operations (XX).—(1) No operation listed in sub-paragraphs (k), (m) and (o) of the definition of "commence" may be carried out without the	There has been no proper explanation in the EM or in the control documents (including the CoCP) of the reasons for and the extent of each of the types of operation listed. Some types of operations (particularly those in paragraphs (k), (m), (n) and (o) have the potential to be significant and long lasting. The issue for the Authorities is the lack of control that they will have over what are likely to be significant aspects of the development. Two alternatives have been provided: A - removing those operations from the definition	Both Alternative A and Alternative B are resisted by the Applicant. The JLAs' concerns at the inclusion of limbs (k), (m), (n) and (o) in the definition of "commence" have been noted at previous deadlines. The Applicant considers that the **Code of Construction Practice** (as amended at Deadline 7) [REP7-022] addresses these concerns through the following controls: (k) - controls on temporary construction compounds (where the vast majority of any temporary buildings and structures are anticipated to be erected) were already included in section 4.5 and new drafting for any other temporary buildings and structures outside of these compounds was added to paragraph 4.5.11;

		consent of the local planning authority, following consultation with the local highway authority. (2) No operation listed in sub-paragraph (n) of the definition of “commence” may be carried out without the consent of the local highway authority, following consultation with the local planning authority. (3) All operations listed in sub-paragraphs (a) to (n) of the definition of “commence” must be carried out in accordance with the code of construction practice. (4) Consent under this requirement must not be unreasonably withheld.	of commencement entirely and B - requiring the consent of the Authorities before any of these activities could begin. If A were to be recommended, then the significant construction sites could be listed as numbered works, as happened in the Sizewell DCO.	(m) - controls and height limits on temporary construction compounds were already included in section 4.5; (n) - new specific drafting on the temporary nature of haul roads has been added in paragraph 4.5.12; and (o) - new specific drafting on the temporary nature of notices added in section 5.8.3 With these additional controls, there is no justification for the striking out of these activities from the definition of "commence" or a new requirement in the form proposed as Alternative B. The latter would undermine the purpose of the definition of "commence", which is to allow preparatory works to take place prior to commencement in an efficient manner to ensure the smooth and timely running of the construction timetable once "commencement" occurs. Adding an obligation to obtain local authority consent would slow the

				pre-commencement period and introduce unpredictability. In addition, the Applicant refers to its response to DCO.2.1 in its **Response to ExQ2** [REP7-081] in relation to the definition of "commence". In relation to the comment on adding construction sites as numbered works, the Applicant reiterates its comment on this matter on e-page 14 onwards in its **Response to Deadline 6 submissions – Appendix A – Response on Design Matters** [REP7-096].
2	Article 2(9) (interpretation)	~~(9) References in this Order to materially new or materially different environmental effects in comparison with those reported in the environmental statement must not be construed so as to preclude the undertaker from avoiding, removing or reducing an adverse environmental effect~~	See reasoning in West Sussex Authorities LIR Appendix M [REP1-068] This appears to be unprecedented. An explanation has been added to the EM. It appears to be a limitation on the "not materially different" test that, as the explanatory memorandum	The Applicant refers to and reiterates its response to DCO.1.15 in the **Applicant's Response to ExQ1** [REP3-089], which explains the justification and precedent for this wording. The Applicant would expect the aim of this wording, to ensure that changes that reduce adverse

		~~that was reported in the environmental statement.~~	[REP6-007] says, has become commonplace in DCOs.	impacts (or provide greater positive effects) can be accommodated, to be desirable to the JLAs and the Applicant is therefore unclear why the JLAs have revived their objection to this provision.
3	Article 2(10) (interpretation)	(10) In this Order, the expression "includes" may ~~is to~~ be construed without limitation, unless so construing would give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.	See related comment above. Ensures compliance with Rochdale Envelope.	The JLAs' justification for this inclusion, which is raised for the first time at D7, is very short such that the Applicant does not fully understand the need or justification for the inclusion of this wording. The Applicant does not consider that this wording is necessary and notes that the Applicant's current wording is standard drafting in a vast number of made DCOs. The word "includes" is used in several contexts in the draft DCO, many of which will bear no relation to the Environmental

				Statement and its conclusions. The Applicant is therefore concerned that including this wording could cause unnecessary confusion and uncertainty in applying provisions of the draft DCO that list things preceded by the word "includes". Where it is justified for lists to be limited by reference to materially or new or materially different environmental effects from those in the ES, this is already provided for – see e.g. the definition of "maintain" in article 2 (interpretation) and the "other works" within the ancillary or related development in Schedule 1 (authorised development) in the **draft DCO** [REP7-005]. Given that the JLAs' proposed wording is almost entirely unprecedented, has not been justified and could have

				unforeseen consequences, the Applicant resists its inclusion.
4	Article 9(4) (planning permission)	**Alternative A** Delete paragraph (4) ~~(4) Any conditions of any planning permission granted prior to the date of this Order that are incompatible with the requirements of this Order or the authorised development shall cease to have effect from the date the authorised development is commenced and for the purpose of this fees~~ ~~article planning permissions deemed to be granted pursuant to the 2015 Regulations shall be deemed to be granted prior to the date of this Order.~~ **Alternative B**	Article 9(4) does not appear to be precedented in any made DCO. It is widely drafted and catches any incompatible planning conditions, but no such conditions are identified. The Authorities have concerns about some existing planning conditions in particular and wish to avoid any doubt and later argument about whether they be overridden. In alternative B, the Authorities are examining the planning history to finalise a list of conditions which they consider should be preserved for the avoidance of doubt, and will	The Applicant resists the deletion of article 9(4) (the JLAs' 'Alternative A') and considers that this provision plays a vital role to minimise uncertainty regarding the interaction of the DCO and prior planning permissions following *Hillside*. In this regard the Applicant refers to its response to DCO.2.6 in its **Response to ExQ2** [REP7-081]. As regards 'Alternative B', taking each of the new subparagraphs suggested by the JLAs in turn: (5) – the Applicant considers that it has already used reasonable endeavours to identify incompatible planning conditions, through *inter alia* the **Planning History** that was updated at Deadline 7 [REP7-056]. Therefore, paragraph (5) seems to be without purpose. (6) – a version of paragraph (6) was added by the Applicant to

		(4) Subject to paragraphs (5), (6) and (7), any conditions of any planning permission granted prior to the date of this Order that are incompatible with the requirements of this Order or the authorised development shall cease to have effect from the date the authorised development is commenced and for the purpose of this article planning permissions deemed to be granted pursuant to the 2015 Regulations shall be deemed to be granted prior to the date of this Order. (5) The undertaker must, before commencement of any development under this Order, use reasonable endeavours to identify any conditions that would cease to have effect under paragraph (4).	seek to agree them with the Applicant.	version 9 of the **draft DCO** submitted at Deadline 7 [REP7-005] and the Applicant has tweaked this wording to more closely reflect the JLAs' suggested wording and provide for the undertaker to use reasonable endeavours to notify the beneficiary of a planning permission affected by the article 9(4) power. (7) – the Applicant is open to including this paragraph (7) and an accordant schedule of planning conditions identified by the JLAs. The Applicant received a preliminary list of conditions the JLAs propose be included in this schedule shortly before Deadline 8 and are reviewing this. The Applicant would emphasise that, now that the JLAs have identified specific conditions for which provision can be made in article 9 if justified, the JLAs' broad-brush 'Alternative A' should fall away.

		(6) if the undertaker identifies any conditions under paragraph (5), the undertaker must notify the relevant planning authority and use reasonable endeavours to notify any person who might be adversely affected by the condition ceasing to have effect. (7) Paragraph (4) does not apply to the conditions listed in column (1) of the table in Schedule [X] (conditions excepted from article 9(4)) of the planning permissions listed in column (2) of that table. New Schedule SCHEDULE [X] CONDITIONS EXCEPTED FROM ARTICLE 9(4) *(1)* | *(2)*		

		Condition / *Planning Permission* [TBC] / [TBC]		
5	Article 9(5) (planning permission)	(5) Subject to paragraph (6), nothing in this Order restricts any person from seeking or implementing, or the relevant planning authority from granting, planning permission for development within the Order limits. (6) No person may implement deemed planning permission— (a) for any development within the area of Work No. 34(c) (replacement open space at Car Park B South and Car Park B North);	There are some particular cases, namely where land is to be used for ecological mitigation, where it would be inappropriate and unnecessary for airport related permitted development rights to remain available. Proposed paragraphs (6)(a), (b) and (c) are intended to achieve that protection and (d) would provide further protection for Pentagon Field. More generally, the Authorities are concerned that leaving the Applicant with uncontrolled permitted development rights to provide car parking, in	The Applicant refers to its response to DCO.2.6 in its **Response to ExQ2** [REP7-081]. As explained in that submission, the Applicant included new article 9(7) in version 9 of the **draft DCO** submitted at Deadline 7 [REP7-005] which accepted the disapplication of (i) all permitted development rights over the work areas for Work No. 38 (habitat enhancement area and flood compensation area at Museum Field) and Work No. 43 (water treatment works) and (ii) permitted development rights for

		(b) for any development within the area of Work No. 38 (Museum Field habitat enhancement area and flood compensation area); (c) for any development within that part of the area of Work No. 41 (Pentagon Field ecological area) which comprises the planting described in paragraphs (a) and (b) of that work; (d) for any development comprising a car park or any development of more than [TBC] metres in height, within any part of the area of Work No. 41 (Pentagon Field ecological area) which does not comprise the planting described in paragraphs (a) and (b) of that Work; (e) for any development comprising a car park on any	addition to the parking proposed in the DCO, increases unnecessarily the risk of the mode share commitments in the Surface Access Commitments being breached. This would be a particular concern were the Environmentally Managed Growth proposals not to be included in the DCO. Proposed paragraph (6)(e) would remove PD rights for airport related parking within the Order limits. The Authorities are in discussions with the Applicant on the Surface Access Commitments and if a satisfactory conclusion can be reached then proposed paragraph (6)(e) could be dropped.	car parking over the work area for Work No. 41 (ecological area at Pentagon Field). These areas were selected as they were the areas identified as being of concern in the JLAs' **Post-Hearing submission on agenda item 8: Draft Development Consent Order** [REP6-110], alongside car parking development more generally. Now, in their Deadline 7 submissions, the JLAs have changed the areas about which they raise concerns to now include Work No. 34(c) (replacement open space at Car Park B) and not Work No. 43 (water treatment works). Inconsistencies between deadlines such as this make it

		other operational land within the Order limits. (6) In this article— (a) "deemed planning permission" means permission which would be deemed to be granted under article 3 (permitted development) and Classes F, G, I, J, K, L, M and N of Part 8 (transport related development) of Schedule 2 to the 2015 Regulations; (b) "initiate" means when development of land shall be taken to be begun as per section 56 (time when development begun) of the 1990 Act, and "initiated" and "initiation" are defined accordingly; and (c) "planning permission" means planning permission granted under the 1990 Act including		difficult for the Applicant to confidently make changes to its documentation and close disputed points. <u>Work No. 34(c) (Car Park B)</u> In relation to the replacement open space at Car Park B, the delivery and maintenance of this will be secured by the Open Space Delivery Plan to be submitted for approval by CBC under article 40(1) (special category land) and the subsequent Landscape and Ecology Management Plans (LEMPs) to be submitted for approval by CBC under requirement 8. The Applicant would be in breach of the DCO were it to exercise its permitted development rights to carry out development contrary to the

		deemed planning permission ~~deemed to be granted under article 3 (permitted development) and Classes F, G, I, J, K, L, M and N of Part 8 (transport related development) of Schedule 2 to the 2015 Regulations~~.		secured planting and landscaping in the approved LEMPs. It is therefore not necessary to disapply permitted development rights in this area. Work No. 41 (Pentagon Field) In relation to Pentagon Field, the Applicant has accepted the disapplication of its permitted development rights for the purpose of car parking development over the whole of the work area for Work No. 41 in the **draft DCO** [REP7-005]. The height restriction proposed in paragraph 6(d) of the JLAs' proposed drafting is not necessary because DLP19 in the **Design Principles** (Doc Ref. 7.3) already provides in respect of Work No. 41 for:

				"The placement and grading of the spoil deposition, with a maximum height of up to 4m (above ground level) and with side slopes of a maximum of 1 in 3 gradient." The Design Principles are secured by virtue of requirement 4 (detailed design). In respect of the full disapplication of permitted development rights over the planting areas of the Work No. 41 area, this is also not necessary because this would be secured by LEMPs and any development contrary to this would be a breach of the DCO. <u>Car parking</u> As detailed in **Appendix B of The Applicant's Response to Rule 17 Letter – Parking** (Doc Ref. 10.64), the Applicant is proposing

				a site-wide car parking space cap. The Applicant considers that this concession supersedes any need for the JLAs' proposed wording in paragraph 6(e).
6	Article 10 (application of the 1991 Act)	(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order— ~~(a) section 56 (directions as to timing)(c);~~ (b) section 56A (power to give directions as to placing of apparatus)(d); (c) section 58 (restrictions following substantial road works)(e); (d) section 58A (restriction on works following substantial street works)(f); (e) section 73A (power to require undertaker to re-surface street)(g);	See West Sussex Authorities LIR Appendix M [REP1-068] Some of these amendments may not be required by the Authorities if provision can be made in the DCO relating to permit schemes and lane rentals (see later on those subjects). In particular, it is important that section 56 of NRSWA must not be disapplied if the permit scheme article is not included. There have been discussions between the Applicant and the Authorities on the permit schemes, and the Authorities	In version 9 of the **draft DCO** submitted at Deadline 7 [REP7-005], the Applicant made provision for the Surrey and West Sussex permit schemes and lane rental schemes to have effect for the authorised development in new paragraphs (6) – (8) and (10) of article 10 (application of the 1991 Act). Given that addition and by reference to the JLAs' justification for their proposed amendments, the Applicant hopes that the JLAs can now drop their request for these provisions to be struck out of article 10 and will await confirmation at Deadline 8.

		~~(f) section 73B (power to specify timing etc. of re-surfacing)(h);~~ ~~(g) section 73C (materials, workmanship and standard of re-surfacing)(i);~~ ~~(h) section 77 (liability for cost of use of alternative route);~~ ~~(i) section 78A (contributions to costs of re-surfacing by undertaker)(j);~~ and (j) Schedule 3A (restriction on works following substantial street works)(k).	will consider any amendments put forward by the Applicant at D7 on permit schemes with a view to resolving them if the Applicant puts forward (as is expected) amendment relating to the permit schemes at D7.	
7	Article 11 (street works)	11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule [X] (streets subject to street works) as are within the Order limits and may— Together with:	The Authorities note that in question DCO.2.8, the ExA asked the Applicant to provide a schedule of the streets affected by Art.11 in lieu of 'any of the streets as are within the Order limits'. This is also a suggestion made by the Authorities, and they	The Applicant has addressed this point in response to DCO.2.8 in its **Response to ExQ2** [REP7-081]. To supplement that explanation and by way of further context as to why the Applicant is hesitant to attempt the exercise of listing out all streets within the Order limits, there is difficulty in identifying all

		(4) Without limiting the scope of the powers conferred by paragraph (1) but subject to the consent of the street authority, the undertaker may, for the purposes of the authorised development, enter on so much of any other street within the Order limits, for the purposes of carrying out the works set out at paragraph (1) above. And a list of streets to be set out in a schedule Or if a list of streets is not included, the Councils propose the following: 11.—(1) The undertaker may, for the purposes of the authorised development and subject to the consent of the street authority, enter on so much of any of the streets as are within the Order limits and may—	will await to comment on the Applicant's drafting.	ways that would meet the definition of a "street" within an area as built-up as the airport. Section 48 of the 1991 Act defines a "street" as: *"the whole or any part of the following, irrespective of whether it is a thoroughfare—* *(a) any highway, road, lane, footway, alley or passage,* *(b) any square or court, and* *(c) any land laid out as a way whether it is for the time being formed as a way or not."* It is not a case of simply identifying named roads within the Order limit – identifying all streets would require consideration of any area that met the definition above, which is potentially far-reaching.

				Therefore, it appears to the Applicant far more sensible for the JLAs to identify any streets/geographical areas to which they have a concern with article 11 applying and the Applicant can then make bespoke provision accordingly. The Applicant understands that the JLAs are undertaking this exercise but as of yet no specific examples have been communicated to the Applicant. Similarly to the point made above in respect of article 9 (planning permission), the Applicant would emphasise that, if the JLAs are not able to advance any streets for which they are concerned about the application of article 11, clearly this should weigh heavily against any decision to amend the provision. This is all the more

				given that there are, as has been previously submitted, a number of precedent made DCOs that take the same approach as the Applicant – e.g. the M3 Junction 9 Development Consent Order 2024, the A38 Derby Junctions Development Consent Order 2023 and the Thurrock Flexible Generation Plant Development Consent Order 2022.
8	Article 18 (traffic regulations)	New paragraph (7A) The instrument referred to in paragraph (7)(a) must be displayed by the applicant on its website and a copy must be sent to— (a) [email address] in the case of Surrey County Council; (b) [email address] in the case of West Sussex County Council.	This is to ensure that the traffic authorities are provided with copies of the "instrument" which gives effect to any traffic regulation measures made by the Applicant under art. 18 (1), (2) or (3), and that the public can see them too.	The Applicant is happy to make clear in article 18 that the standard process it follows for TROs it enacts in its capacity as airport operator, that a copy is held at its registered office address for inspection upon request, should equally apply to TROs made under the DCO. The Applicant is also content to go further than this and provide that copies should be sent to the local highway authorities. These

				changes have been made as new article 18(8) in version 10 of the **draft DCO** submitted at Deadline 8 (Doc Ref. 2.1. v10).
9	Article 25 (felling or lopping of trees and removal of hedgerows	(5) In this article "hedgerow" means a hedgerow within the meaning of ~~has the same meaning as in~~ the Hedgerow Regulations 1997 and which are listed in Schedule [X] and shown on the hedgerow plan. In article 2 (interpretation) a new definition: "the hedgerow plan" means the plan certified as such by the Secretary of State under article 52 (certification of documents); In article 52 (certification of documents, etc), a new entry referring to the hedgerow plan	See the Authorities' response to EXQ DCO.2.1.2 at D7	The Applicant maintains its position as expressed in response to DCO.2.12 in the **Applicant's Response to ExQ2** [REP7-081].

		A new Schedule listing the hedgerows: this could be based on the drafting in, for example, Schedule 16 to the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024		
10	Article 31 (time limit for exercise of authority to acquire land compulsorily	31.—(1) After the end of the period of 7~~ten~~ years beginning on the start date— (a) no notice to treat is to be served under Part 1 of the 1965 Act; and (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 34 (application of the 1981 Act and modification of the 2017 Regulations), in relation to any part of the Order land.	Although the Authorities remain of the view that 7 years plus the "start date" is a highly unusual length of time (and there are particular concerns about the potential sterilisation of the Bayhorne Farm proposals), they are prepared to agree to a reduction from 10 to 7 years.	The Applicant welcomes the JLAs' agreement to this time period, which mirrors that included in version 9 of the **draft DCO** submitted at Deadline 7 [REP7-005].

11	Article 40 (special category land)	New paragraph: (3) Provision must be made (whether in the relevant landscape and ecology management plan, the open space delivery plan submitted under paragraph (1) or otherwise) which ensures that the undertaker is responsible for the cost of and associated with the ongoing maintenance in perpetuity of the replacement land shown on the special category land plans with Plot number 1/013 (land west of Church Meadows) and comprising Work No. 40(c).	The circumstances that arise here are unusual. Under the current version of the DCO, the Applicant intends to acquire the special category land at Church Meadows using (s131(4)(b) of the Planning Act 2008). Doing so requires the provision of replacement land. The special category land to be acquired is in the area of RBBC. However, the replacement land is located in the area of MVDC. Under s131(4), the replacement land must have been or will be vested in the "prospective seller" (ie RBBC) and subject to the same rights, trusts and incidents as attach to the order land. RBBC are reluctant to accept ownership of open space land	The Applicant refers to the explanation of its current position set out in response to CA.2.9 in its **Response to ExQ2** [REP7-080]. Article 40 (special category land) and the recitals were amended in version 9 of the **draft DCO** submitted at Deadline 7 [REP7-005] to reflect the Applicant's new approach to compulsory acquisition of existing special category land to accommodate the JLAs' position that none of the JLAs wish to own or maintain the land to be laid out as replacement open space and to allow for this land to remain vested in / be vested in the Applicant. The Applicant understands that this revised position is agreed by the JLAs, subject to one outstanding point regarding the length of time for which the

			outside their area and continue to have the financial responsibility of maintaining it. Similarly MVDC do not want that responsibility. In order to address this issue, the Authorities understand that the Applicant is intending to submit amendments to the DCO at D7. The replacement land will still be maintained as open space but the obligation to do so will be placed, in the first instance, on the Applicant, secured in the relevant LEMP. The Authorities will consider the changes (including any changes to the OLEMP) made at D7, but in the meantime put forward their own amendment which would ensure ongoing maintenance of the land by the Applicant is assured.	Applicant must be bound to maintain the replacement open space.

12	Art. 49 (defence to proceedings in respect of statutory nuisance)	49.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph ~~(c), (d), (e), (fb),~~ (g)~~,~~ ~~(ga) and (h~~) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance— (a) relates to premises used by the undertaker for the purposes of or in connection with the construction~~,~~ or maintenance ~~or operation~~ of the authorised development and that the nuisance is attributable to the carrying out of the authorised	Dealing first with the general position, the Applicant has explained in its explanatory memorandum [REP6-007] that in its view the incorporation of article 49 imposes a high standard on the undertaker – notably higher than section 158 of the Planning Act 2008 (Nuisance: statutory authority) - by referring to the CoPA processes and specifying that the nuisance must not have been reasonably avoidable. The Authorities' understanding of the Applicant's position is that including more of the paragraphs of section 79(1) of EPA 1990 within the scope of article 49 somehow increases the protection afforded to those potentially affected by statutory nuisances arising from the	The Applicant maintains and reiterates the position set out in its response to DCO.2.16 in the **Applicant's Response to ExQ2** [REP7-081]. It is not entirely clear to the Applicant from the JLAs' Deadline 7 submission what the JLAs' position is on the interaction between the Environmental Protection Act 1990 (the "**EPA**") and the Planning Act 2008 (the "**2008 Act**"), but it appears to be that, in the absence of article 49 of the draft DCO, sections 79 – 82 of the EPA would apply notwithstanding section 158 of the 2008 Act. If that is the JLAs' position, the Applicant is not clear how that has been arrived at.

		development in accordance with— (i) a notice served under section 60 (control of noise on construction sites) of the Control of Pollution Act 1974; or (ii) a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(b); or (b) is a consequence of the construction, maintenance or operation of the authorised development and that it cannot reasonably be avoided.	development. The Authorities consider that this is a misunderstanding of the position. Article 49 is not included to provide additional protection, it is included because sections 79 to 82 of EPA 1990 (and all the controls they contain) are not being disapplied under the DCO, they would therefore take effect despite section 158 of the 2008 Act, and the Applicant would therefore be potentially liable to prosecution under section 82 of EPA. Article 49 provides the Applicant with additional defences against prosecution. In most cases, the defence of "best practical means" is available (s.82(9)) - but no others. Article 49 replaces the best practical means defence with a weaker "cannot	Section 158 of the 2008 Act provides: *"(1) This subsection confers statutory authority for—* *(a) carrying out development for which consent is granted by an order granting development consent;* *(b) doing anything else authorised by an order granting development consent.* *(2) Statutory authority under subsection (1) is conferred only for the purpose of providing a defence in civil or criminal proceedings for nuisance.* *(3) Subsections (1) and (2) are subject to any contrary provision made in any particular case by an order granting development consent."*

			reasonably be avoided" defence. Therefore the starting point, so far as the Authorities is concerned, is that the number of paragraphs of s.79(1) to be included with the scope of article 49 should be limited, and the Applicant should justify each one individually. Turning to some of the individual paragraphs: The Applicant has sought to explain (in the response to ExA Q1 DCO.1.37 [REP3-089]) the inclusion of the individual paragraphs of section 79(1) and that that the code of construction practice will provide sufficient environmental controls.	Hence, section 158 provides a defence to all *"civil or criminal proceedings for nuisance".* The Applicant's interpretation appears to be supported by promoters of other made DCOs – see e.g. the Explanatory Memorandum for the Yorkshire Green Energy Enablement Project[1] which states in respect of their equivalent statutory nuisance article: *"This Article amends the terms of the defence in the case of noise nuisance (**other types of nuisance continue to have the general defence afforded by section 158**)"* (emphasis added). The Applicant would welcome further discussions with the JLAs

[1] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN020024/EN020024-001318-National%20Grid%20Electricity%20Transmission%20(NGET)%20-%203.2(G)%20Explanatory%20Memorandum%20(Clean)%20-%20Final%20Issue%20G.pdf

			The COCP does not, of course, apply to the operation of the airport, and it is very unusual for DCOs to refer to "operation" in this article. Notably it is not included in either Manston or Luton. The applicant seeks to justify the inclusion of subsection 79(1)(c) (fumes or gases emitted from premises) by saying that by subsection 79(4) it only applies to emissions from private dwellings. In that case, there is no need to disapply it. It is also difficult to see where circumstances under subsection 79(1)(d) (dust, steam, smell or other effluvia arising on industrial, trade or business premises) would	to better understand their position and concern. Subject to such discussions, the Applicant proposes no revisions to its drafting of this article which it considers to be standard and well-precedented as detailed in the **Explanatory Memorandum** (Doc Ref. 2.2).

			arise, and even if they did, and action was taken, the defence of best practical means would be available. The position is similar in relation to (fb) (artificial light emitted from premises), which by virtue of s.79(5B) does not apply to artificial light emitted from an airport. Again, no need to double disapply something which already doesn't apply, if the Applicant is concerned about liability under s.79 for airport premises. The applicant says that (ga) (noise emitted from a vehicle, machinery or equipment in a street) does not apply to noise made by traffic. It is unclear how that justifies the disapplication of the provision.	

			There is no other specific justification for the disapplication of the other paragraphs in the explanatory memorandum of SoCG, only reliance on a very small number of DCO precedents, which are not representative of airport development. The only made airport DCO precedent (Manston) disapplies paragraph (g) and does not extend to the operation of the authorised development. In the draft Luton DCO, only paragraphs (d), (e), (g) and (ga) would be excluded in the equivalent provision, and it also does not apply to operation of the authorised development.	
13	Schedule 1 Authorised Development	Work No. 18	No specific amendments are shown to the work itself but as the Authorities mentioned in their post hearing submissions on agenda item 8 of ISH8 [REP6-110], there is greater	The Applicant responded to the JLAs' comments on Work No. 18 at Deadline 7, namely in JLAD6NO2 and JLAD6NO3 in **The Applicant's Response to Deadline 6 Submissions** [REP7-

			detail required about the sequencing of these works and in particular about (a) the inclusion of noise mitigation in the period between removal of the existing bund and the construction of the replacement bund and (b) uncertainty about the acoustic effectiveness of the bund. Further detail is in the Authorities' ExQ1 response reference NV1 and NV2 [REP4-068] and in [REP3-135] DCO 1.38 Works 18. The issue is not just the gap in acoustic provision when the existing bund is removed but also uncertainty about the acoustic effectiveness of the bund. An amendment to requirement 32 (western noise mitigation bund) is suggested below.	095] and the **Response on Design Matters** [REP7-096]. With regards to the sequencing of Work No. 18 and in response to the JLAs' comments, the Applicant revised paragraph 5.9.15 of the **Code of Construction Practice** [REP7-022] at Deadline 7 to provide further detail on the sequencing of the western noise mitigation bund. The Applicant's response on the effectiveness and performance of the replacement western noise mitigation bund is contained in **The Applicant's Response to Deadline 6 Submissions** [REP7-095]. No change is required to the description of Work No. 18 in response to the JLAs' comment.

14		Work No. 22 Works associated with the North Terminal building including works to— (a) extend the International Departure Lounge on levels 20, 30 and 40 to the north; (b) extend the International Departure Lounge on levels 10, 20 and 30 to the south; (c) extend the baggage hall and baggage reclaim; (d) construct the North Terminal autonomous vehicle station; (e) construct the autonomous vehicle maintenance building; (f) reconfigure internal facilities; (g) construct a multi-storey car park with provision for no more than 890 parking spaces for cars; (h) demolish the CIP building and circulation building; (i) remediate the coaching gates.	Generally, the Authorities consider that more detail is required in relation to the car park, hotel and office accommodation elements of the development, and including limitations on parking space numbers, guest bedroom spaces and office floor areas is a reasonable minimum expectation. In relation to hotels, the Authorities have suggested a new requirement (see later in this document) which would impose controls on the type of parking that could be provided.	The Applicant has included new requirement 37 (car parking spaces) in the **draft DCO** (Doc Ref. 2.1) submitted at Deadline 8 setting an overall cap on the number of car parking spaces provided within the Order limits. This supplements the existing physical size constraints that already apply to Work No. 22(g) by virtue of article 6 (limits of works) of the **draft DCO** (Doc Ref. 2.1) and the **Works Plans** [REP7-018] and **Parameter Plans** [REP7-020]. The latter imposes a maximum building height of 27m above datum level for Work No. 22(g). As a result, the Applicant does not consider it necessary to specify particular numbers of spaces on a work-by-work basis.

15		Work No. 28 Works associated with the Car Park H Site including works to— (a) construct a hotel; (b) construct an office with provision for up to 5,000 square metres of office floor space; (c) construct a multi-storey car park with provision for no more than 3,700 parking spaces for cars; (d) demolish Car Park H; (e) external vehicle and pedestrian accesses.	See general comment above	Office The concern underlying the JLAs' proposal to constrain the maximum floorspace of the office is not understood from the JLAs' comments provided to date. If the concern relates to the physical size and footprint of the office, the outer bounds of this are already restricted by article 6 (limits of works) of the **draft DCO** (Doc Ref. 2.1) by reference to the **Works Plans** [REP7-018] and **Parameter Plans** [REP7-020]. The latter imposes a maximum building height of 27m above datum level for any development comprising any part of Work No. 28. If the concern relates to car parking on the assumption that an office with a larger floor space would require more people to

				arrive by car (which, for the avoidance of doubt, is not conceded by the Applicant), this concern has hopefully been addressed by the Applicant's new requirement in the **draft DCO** (Doc Ref. 2.1) submitted at Deadline 8 which sets an overall cap on the number of car parking spaces provided by the undertaker within the Order limits. Therefore, the Applicant does not consider that the JLAs have substantiated a justification for specifying the floor space of the office. <u>Car parking spaces</u> As above, given the Applicant's new requirement setting an overall cap on the number of car parking spaces provided within the Order limits, the Applicant does not consider it necessary to

				specify particular numbers of spaces on a work-by-work basis.
16		Work No. 29 Works to convert Destinations Place office into a hotel with provision for up to 250 bedrooms and refurbishment of the building exterior.	See general comment above	The Applicant's justification as to why it is not considered necessary to specify a number of hotel bedrooms / bedspaces in the works descriptions is contained in response to **ExQ2 DCO.2.17** [REP7-081] submitted at Deadline 7. This justification is further bolstered by the addition of the overall car parking space cap in the **draft DCO** at Deadline 8, given that the Applicant understands the basis for the JLAs' desire to specify bedroom numbers to be concerns over hotel parking. It is not clear to the Applicant why the JLAs consider it necessary to add the *"refurbishment of the building exterior"* and why this is not considered to be covered by the existing wording describing

				the conversion of the building into a hotel. Design Principle DBF39 secures the detailed design considerations for the conversion of Destinations Place, including matters to be considered in the retention and renovation of the existing building fabric. The additional wording suggested by the JLAs is therefore not considered necessary in the context of this Design Principle, which is secured under requirement 4 (detailed design) of the **draft DCO**.
17		Work No. 30 Works to construct Car Park Y including— (a) earthworks and works to construct an attenuation storage facility with a capacity of approximately 32,000m3; (b) construction of a multi-storey car park with provision for no	See general comment above	As above, given the Applicant's new requirement in the **draft DCO** (Doc Ref. 2.1) submitted at Deadline 8 setting an overall cap on the number of car parking spaces provided within the Order limits, the Applicant does not consider it necessary to specify

		more than 3,035 parking spaces for cars.		particular numbers of spaces on a work-by-work basis.
18		Work No. 31 Works associated with Car Park X including— (a) earthworks and landscaping; (b) construction of a flood compensation area with a capacity of approximately 55,000m3; (c) construction of an outfall structure; (d) access improvements; (e) deck parking provision with provision for no more than 3,280 parking spaces for cars, including a re-provision of Purple Parking and surface parking amendments. ~~(f) surface parking amendments.~~	See general comment above	As above, given the Applicant's new requirement in the **draft DCO** (Doc Ref. 2.1) submitted at Deadline 8 setting an overall cap on the number of car parking spaces provided within the Order limits, the Applicant does not consider it necessary to specify particular numbers of spaces on a work-by-work basis. The Applicant is not clear on the justification for the JLAs' suggested change to part (f) of Work No. 31. Both the Applicant's existing wording and the JLAs' suggested change secure "surface parking amendments" within the description of Work No. 31, and therefore the Applicant does not consider the suggested change to be necessary.

19		Work No. 32 Works to remove existing car parking at North Terminal Long Stay car park and construct a decked car parking structure with provision for no more than 1,680 parking spaces for cars if Work No. 44 (wastewater treatment works) is not implemented or 2,842 parking spaces for cars if Work No. 44 is implemented.	See general comment above	As above, given the Applicant's new requirement in the **draft DCO** (Doc Ref. 2.1) submitted at Deadline 8 setting an overall cap on the number of car parking spaces provided within the Order limits, the Applicant does not consider it necessary to specify particular numbers of spaces on a work-by-work basis.
20		Work No. 33 Works associated with the existing Purple Parking car park including— (a) removal of existing decked car parking structure; (b) partial removal of existing surface car parking; (c) erection of a fenceline; (d) re-configuration of remaining surface level car parking with provision for no more than 700 parking spaces for cars.	See general comment above	As above, given the Applicant's new requirement in the **draft DCO** (Doc Ref. 2.1) submitted at Deadline 8 setting an overall cap on the number of car parking spaces provided within the Order limits, the Applicant does not consider it necessary to specify particular numbers of spaces on a work-by-work basis.

21		Work No. 38 Works to construct the habitat enhancement area and flood compensation area at Museum Field including works to— (a) construct a flood compensation area with a capacity of approximately 57,600m3; 52 (b) extend Gatwick greenspace footpath; (c) construct a maintenance access road; (d) undertake earthworks, landscaping and a bund (up to 6 metres in height above datum) around the southern and eastern perimeter; (e) construct footbridge; (f) construct two farm access bridges.		In response to the JLAs' request, the Applicant has expanded Design Principle DLP10 at Deadline 8 to specify the maximum height and gradient of the earth bund to be provided in the south and east of Museum Field under Work No. 38(d). The Applicant has amended the relevant Design Principle rather than the description of Work No. 38, as it is considered more appropriate to specify the maximum design parameters alongside the description of the final design of the earth bund in the existing Design Principle's wording. It also follows the same approach to securing the maximum height and gradient for spoil deposition at Pentagon Field under Design Principle DLP19. The **Design Principles** (Doc Ref. 7.3) are secured in requirement 4

				(detailed design) of the **draft DCO** and the amendment made by the Applicant therefore has the same effect in addressing the JLAs' request as amending the work description.
22		Work No. 41 Works associated with land ~~to create an ecological area~~ at Pentagon Field including works to— (a) establish a temporary spoil receptor site; (b) permanently raise the ground level across the central part of Pentagon Field to create a raised spoil platform to a height of up to 4 metres above datum; (c) reinstate land by— (i) reprofiling and reinstatement of grassland;	In the case of Work No. 41, the Authorities consider that far more detail about the scale and location of the spoil bunds needs to be provided in the description of works and in the control documents, and that the bunds (which should be described as land raising) should be referred to in the parameter plans (see amendment to Schedule 13 below). CBC will seek to engage in discussions with the Applicant over the detailed wording including those words in square brackets.	The Applicant revised the wording of Work No. 41 in version 9 of the **draft DCO** submitted at Deadline 7 [REP7-005] in response to the JLAs' **Post-Hearing submission on agenda item 8: Draft Development Consent Order** [REP6-110]. In that update, the Applicant: specified the amount of planting as a minimum size rather than an approximate; specified the minimum length and width of the proposed tree belt; and changed the description of the 'spoil bunds'. These changes address some of the requests now expanded upon by the JLAs here.

		(ii) planting of a native tree belt approximately 15 metres wide and [TBC] long along the eastern boundary of Pentagon Field adjacent to Balcombe Road; (iii) [other planting elements to be confirmed – it is currently unclear where and what the planting works listed in Works 41 comprise.] ~~(a) deliver approximately 1ha of planting;~~ ~~(b) plant a tree belt approximately 15 metres length;~~ ~~(c) create spoil bunds.~~		Of the remaining details in the JLAs' requested change to Work No. 41, the Applicant's response is as follows: • The existing site-specific Design Principle for Pentagon Field (DLP19) already secures a number of details set out in the JLAs' requested change to Work No. 41. Notably, Design Principle DLP19 specifies the maximum height and gradient of the spoil deposition. The **Design Principles** (Doc Ref. 7.3) are secured in requirement 4 (detailed design) of the **draft DCO** (Doc Ref. 2.1) and therefore have the same effect as amending the work description.

				• The Work Nos. describe the permanent components of the final Project and not the temporary works, e.g. the temporary soil stock piles to be created on Pentagon Field. These piles on the site will be controlled by the Soil Management Plans submitted to CBC for approval and which must be substantially in accordance with the **Soil Management Strategy** [APP-086] under requirement 29 (soil management plan) of the **draft DCO** (Doc Ref. 2.1).
23		Work No. 43 Works to construct water treatment works including—	See general comment above	The Applicant revised the wording of Work No. 43 in version 9 of the **draft DCO** submitted at Deadline 7 [REP7-005] in response to the JLAs' suggestion their **Post-**

		(a) 6 reed beds, surrounded by embankments and suitable boundary treatment; (b) associated plant, equipment and machinery; (c) maintenance access; (d) a cabin, secure storage unit and the reprovision of the car parking for Gatwick Greenspace Partnership parking.		**Hearing submission on agenda item 8: Draft Development Consent Order** [REP6-110]. The Applicant wishes to highlight that the JLAs put forward suggested replacement wording for Work No. 43 at Deadline 6 [REP6-110], which the Applicant duly considered and responded to, but the JLAs have now put forward different wording at Deadline 7. The Applicant would kindly request that the JLAs provide a consistent position in order that the Applicant can take this into account and in the hope of reaching an agreed position on the works descriptions. Notwithstanding this, the Applicant has again revised the wording of Work No. 43 in version 10 of the **draft DCO** submitted at Deadline 8 (Doc Ref. 2.1) to

				reflect the JLAs' new suggested wording.
24		Work No. 44 Works to— (a) remove existing surface car parking and associated structures; (b) construct wastewater treatment works; (c) construct new rising mains and pumping station next to Gatwick Airport Police Station; (d) provide a new pipe outfall to River Mole; (e) provide associated revisions to wastewater infrastructure within the project boundary.	The works are described in the Project Change 4 documents, and include a new pumping stations. Elsewhere in Schedule 1, pumping stations have been listed, for example Work No 4(c)(ii). This is an integral part of the Work and should be listed, along with the other suggested details. As with other works, there is insufficient detail in the Works and parameter plans to show the lateral and vertical limits of the various elements of the works.	The area of Work No. 44 on the **Works Plans** [REP7-019] relates to the On-airport WWTW. As explained in the **Second Change Application Report** [REP6-072], the associated network of wastewater infrastructure outside of the On-Airport WWTW does not need to be specified in a work number as it can be delivered as ancillary or related development under the latter part of Schedule 1, most pertinently paragraph (b). This applies to parts (c) to (e) of the JLAs' suggested response. Separately and following the ExA's acceptance of the Second Change Application, the Applicant has revised the **Design Principles** (Doc Ref. 7.3) to reflect the On-Airport WWTW and

				associated changes to the wastewater proposals, should the WWTW facility form part of the final consented Project.
25		**Work No. [X]** Work to construct a pumping station east of the railway [X] if Work No. 44 is not constructed	As mentioned above, pumping stations are mentioned elsewhere in Schedule 1 (another example of a stand alone pumping station work is Work No. 19). This pumping station and its associated pipe run is shown on plan [REP6-016] drawing 5.2.1e (Environmental Statement Project Description Figures Version 4 (Tracked)) but it has been deleted from the latest version of the plan [REP6-015]. The Authorities understand that the pumping station is still required in case Work No. 44 is not delivered.	As explained above and in the **Second Change Application Report** [REP6-072], the associated network of wastewater infrastructure outside of the On-Airport WWTW does not need to be specified in a work number as it can be delivered as ancillary or related development under the latter part of Schedule 1, most pertinently paragraph (b). This applies to the pumping station east of the Brighton-London mainline railway. Additionally, and again as noted above, the Applicant has revised the **Design Principles** (Doc Ref. 7.3) to reflect the associated changes to the wastewater

				proposals, should the WWTW facility form part of the final consented Project. This includes the relationship between this pumping station and the delivery of the On-airport WWTW.
26.		**Additional Works** The Authorities consider that some of the larger construction compounds should be added to the list of numbered works, rather than be listed with the ancillary works, because of their size and the length of time they will be required. If the ExA indicates sympathy with this position, then the Authorities consider that it would be for the Applicant to draft the work description. Schedule 1 to the Sizewell C (Nuclear Generating Station)		The Applicant maintains the position set out in its **Response to Deadline 6 submissions – Appendix A – Response on Design Matters** [REP7-096] on this matter. The Applicant does not consider that the JLAs have adequately explained why *"their size and the length of time they will be required"* justifies the inclusion of temporary construction compounds that will only be in place during the construction period as numbered works. As regards the reference to the Sizewell C (Nuclear Generating

		Order 2022 included a temporary accommodation campus as Work No. 3. This could be used as a template.		Station) Order 2022, it is noted (as it was in the Applicant's previous submission cited directly above) that the Sizewell C (Nuclear Generating Station) Order 2022 includes *"construction and provision of building compounds"* and *"establishment of temporary construction areas and compounds"* as 'other associated development' in Part 2 of Schedule 1, rather than as numbered works. The facility referred to which comprised Work No. 3 (temporary accommodation campus) was a campus with buildings to accommodate up to 2,400 bed spaces and associated infrastructure. Development of this nature is not comparable in scale to the temporary construction compounds that are in question here.

27.	Req 2A Phasing scheme	Phasing scheme and indicative timings of submissions of documents 2A.—(1) The authorised development must not commence until a phasing scheme setting out the anticipated phases for construction of the authorised development has been submitted to the host authorities and National Highways. (2A) The date of commencement of the authorised development must be no sooner than the expiry of the period of 6 months beginning with the date on which the phasing scheme is submitted under paragraph (1). (2) The undertaker must review and make any necessary updates to the phasing scheme and submit that updated phasing scheme to	The amendments proposed here are intended to ensure that the Authorities are properly able to prepare and allocate resources in advance of submissions being made, particularly at periods when applications will be coming forward intensively. The amendments should not, and are not intended to result in any significant delay to the delivery of the project. The Authorities understand that the Applicant will be submitting amendments to this provision at Deadline 7, which the Authorities will consider.	The Applicant made amendments to this requirement in version 9 of the **draft DCO** submitted at Deadline 7 [REP7-005] in response to the JLAs' initial comments on the requirement at Deadline 6. The justification for the amendments made by the Applicant as opposed to the drafting proposed by the JLAs is set out in row 178 of the Applicant's **Schedule of Changes to the draft DCO** [REP7-004]. The Applicant notes that the JLAs have not had a chance to respond on the Applicant's amended drafting and will therefore await their comments at Deadline 8.

		the host authorities and National Highways: (a) no later than one year after ~~five years from~~ the date of commencement of the authorised development; (b) at any time if the undertaker proposes a significant change to the contents or timing of the phases of construction in a previously submitted phasing scheme; and I at least once in every year~~no later than every five years~~ after the date of the most recent submission of a phasing scheme under this sub-paragraph (2), provided that the undertaker is not required to submit any further phasing scheme to a host authority after the completion of the construction of the authorised		

		development, or after such earlier date as may be agreed by the host authority in question.~~fifteenth anniversary of the commencement of the authorised development.~~ (2A) A submission of an updated phasing scheme made to a host authority under sub-paragraph (2)(b) must be made to the host authority at least 3 months before the significant change in question is implemented unless otherwise agreed by the host authority in question. (2B) Where any requirement in this Schedule requires the submission to any of the host authorities of details or a document relating to the authorised development, the undertaker must provide to the host authority in question indicative timings for the		

		submission of the relevant details or document in question at least 3 months before their submission unless otherwise agreed by the host authority in question. (3) Where any requirement in this Schedule requires the submission to any of the host authorities or National Highways of details or a document relating to a part of the authorised development, the undertaker must: (a) state which phase that part falls within by reference to the most recent phasing scheme submitted under sub-paragraph (1) or (2); and (b) where the part does not constitute the whole phase~~:~~ (i) identify which works in Schedule 1 (authorised development) constitute the part,		

		including by reference to the works plans (where applicable); and (ii) provide indicative timings for the submission of the relevant details or document for the remainder of works in that phase. (4) In this requirement "phasing scheme" means a written document which— (a) identifies, by reference to Schedule 1 (authorised development), the works that are anticipated to be constructed within successive temporal phases of construction; (b) includes a layout plan showing the location of the works anticipated to be constructed in each phase; aI(c) includes an indicative construction programme for any phases to be delivered in the five years		

		following the date of submission of the phasing scheme and indicative timings for the delivery of later phases;		
28.	Req. 3 Time limit and notifications	(2) The undertaker must notify the host authorities— (a) within the period of 7 days beginning with~~after~~ the date on which the authorised development begins; (b) at least 42~~28~~ days prior to the anticipated date of commencement of the authorised development, provided that commencement may still lawfully occur if notice is not served in accordance with this sub-paraglh; (c) within the period of 7 days beginning with~~after~~ the actual date of commencement of the authorised development;	These amendments are intended to correct the position following submission of amendments at D6 in which references to "business" days were removed. The Authorities understand that the Applicant will be submitting amendments to this provision at Deadline 7, which the Authorities will consider.	The Applicant refers to and maintains the position set out in section 8.2 of its **Response to Deadline 6 Submissions** [REP7-05] as regards the appropriate time periods for this requirement.

		(d) at least 4228 days prior to the anticipated date of commencement of dual runway operatil; and (e) within the period of 7 days beginning withafter the actual commencement of dual runway operations.		
29.	Req. 4 Detailed design	4.—(1) No part of the authorised development (except for the highway works and listed works) is to commence until CBC has been consulted on the design of that part, with this consultation to take place in the same manner as if taking place pursuant to paragraph F.2. of Part 8 of Schedule 2 to the 2015 Regulations (subject to sub-paragraph (6)). (3) No part of any listed works is to commence until details of the layout, siting, scale and external appearance of the buildings,	These amendments would mean MVDC would be discharging authority for Work No 40. The Authorities understand that the Applicants will be submitting amendments to this provision at D7, which the Authorities will consider.	The Applicant amended requirement 4 (detailed design) in version 9 of the **draft DCO** submitted at Deadline 7 [REP7-005] to provide for MVDC to be the discharging authority for the detailed design of Work No. 40(a). The Applicant awaits the JLAs' comments on its drafting at Deadline 8.

		structures and works within that part have been submitted to and approved in writing by CBC (in consultation with MVDC and RBBC to the extent that they are the relevant planning authority for any land to which the details relate). (7) In this paragraph, references to CBC are to be read as references to MVDC in the case of Work No. 40 (works associated with land to the north east of Longbridge Roundabout) and MVDC is not to be a consultee where as a consequence of the foregoing it would be responsible for approving details or agreeing any matter instead of CBC.		
30.	Req. 4	(7) No part of the authorised development is to commence until a statement of compliance demonstrating how the plans and	A compliance plan would assist the Authorities in understanding how proposals fit in with the control	The Applicant amended requirement 4 (detailed design) in version 9 of the **draft DCO**

	Detailed design	details of the relevant building, structure or works for that part are in compliance with, where applicable— (i) the design principles in appendix 1 of the design and access statement; and (ii) the limits of works; and (iii) the parameter plans.	documents, which should help with resourcing and ensuring time limits are met. The Authorities understand that the Applicant will be submitting amendments to this provision at D7, which the Authorities will consider.	submitted at Deadline 7 [REP7-005] to provide for the submission of 'compliance statements' on effectively the same basis as is provided for in the JLAs' drafting. The Applicant awaits the JLAs' comments on its drafting at Deadline 8.
31.	Req. 8	8.—(1) No part of the authorised development is to commence until a landscape and ecology management plan for that part has been submitted to and approved in writing by CBC (in 60 consultation with RBBC, MVDC or TDC to the extent that they are the relevant planning authority for any land to which the submitted plan relates) (5) In this paragraph, references to CBC are to be read as	See comments above on requirement 4. The Authorities understand that the Applicants will be submitting amendments to this provision at D7, which the Authorities will consider.	The Applicant amended requirement 8 (landscape and ecology management plan) in version 9 of the **draft DCO** submitted at Deadline 7 [REP7-005] to provide for MVDC to be the discharging authority for LEMPs for Work No. 40. The Applicant awaits the JLAs' comments on its drafting at Deadline 8.

		references to MVDC in the case of Work No. 40 (works associated with land to the north east of Longbridge Roundabout) and MVDC is not to be a consultee where as a consequence of the foregoing it would be responsible for approving a plan instead of CBC.		
32.	Req. 9 Contaminated land and groundwater	Placeholder: no amendments suggested at this stage. 9.—(1) In respect of any part of the authorised development where **historical data cannot establish that the risk of contaminated land is low**, the undertaker must conduct ground investigations prior to that part of the authorised development being commenced. The scope of these	The Authorities are considering whether sub-paragraph (1) and in particular the highlighted words below can be strengthened and/or made clearer so as to ensure that ground investigations take place in appropriate circumstances and in line with the Authorities' usual expectations.	No specific drafting has been advanced by the JLAs in their Deadline 6 submission and the Applicant is unclear as to the precise nature of their concern with the Applicant's current drafting, which has been in the draft DCO since the submission version [APP-006] without objection from the JLAs.

		investigations must be agreed with the relevant planning authority (in consultation with the Environment Agency on matters related to its functions).	The Authorities will seek to agree wording with the Applicant.	The Applicant is surprised that the JLAs have chosen to raise concerns with this drafting at Deadline 7, without substantiating the concern or the proposed alternative drafting. The Applicant will continue to engage with the JLAs constructively and receive any suggestions, but it is noted that there is limited time remaining in the examination for the Applicant to address points that are yet to be explained.
33.	Req. 14 Archaeological remains	Placeholder: no amendments suggested at this stage.	The Authorities will carry out a check on the revised written scheme of investigation which is expected at D7. If the Authorities consider any amendments to R14 are required they will submit them at D8	The Applicant awaits any specific comment from the JLAs in this regard, though again noting the limited time remaining in the examination for the Applicant to address points that are yet to be explained.

34.	Req. 15 Air noise envelope	(2) The undertaker shall be required to submit annual monitoring and forecasting reports and, if necessary, noise compliance plans to the independent air noise reviewer in accordance with the requirements contained at section 7 of the noise envelope document and at the same time shall send copies of those documents to the host authorities so they may make comments to the independent air noise reviewer. The independent air noise reviewer must have regard to any comments that it receives from the host authorities and the Applicant must afford such assistance as the host authorities may require reasonably require. (3) The undertaker must comply with each noise compliance plan which is approved following scrutiny and verification by the	Limited changes to the process which would ensure that host authorities had sight of the documentation and had a consultee role. There is also a duty on the Applicant to co-operate with the host authority **Note:** the Authorities are considering whether further changes are required to this requirement.	This requested amendment is not agreed by the Applicant. The process of verification is a technical exercise requiring sufficient expertise. The CAA is both independent and has that expertise. Whilst the Applicant notes the general theme of comments on 'involvement', this should only be where it is necessary by serving a meaningful purpose for the approval. It is not considered that would be the case for this approval exercise, which is a technical exercise. In addition, adding in more process through consultation is likely to lengthen the verification process making it less efficient, which will impact on the ability to reach a conclusion at the earliest opportunity to ensure certainty of the position and in the event of any predicted breach actions being taken in the shortest

		independent air noise reviewer or the Secretary of State (as is relevant in the circumstances) in consultation with the host authorities, subject always to compliance with all other laws and international obligations which are applicable to the noise compliance plan and the measures therein contained. (5) ……. until an annual monitoring and forecasting report has been approved (following consultation with the host authorities) by the independent air noise reviewer or by the Secretary of State (as is relevant in the circumstances) which confirms compliance with the noise envelope limit identified to have been exceeded or forecast to be		possible timescale and capacity declarations restrictions taking effect at the earliest point, In that context local authority involvement as a consultee in this verification process is counter-intuitive to the principle aim of the local authorities to see matters dealt with as expeditiously as possible, and it also an unnecessary use of resource.

		exceeded (as is relevant in the circumstances), including where relevant when taking account of the measures proposed within a noise compliance plan to address any such exceedance.		
35.	Req. 16 Air noise envelope reviews	(1) The undertaker shall be required to submit noise envelope review documents to the independent air noise reviewer for approval in accordance with the requirements contained at section 8 of the noise envelope document and at the same time must send copies of those documents to the host authorities so they may make comments to the independent air noise reviewer. The independent air noise reviewer must have regard to any comments that it receives from the host authorities	Limited changes to the process which would ensure that host authorities had sight of the documentation and had a consultee role, and shortening of some of the time limits, which appear generous for simple publication of a document. There is also a duty on the Applicant to co-operate with the host authority.	Please see the above response regarding "involvement" and the technical nature of the exercise which the CAA are the most appropriate body to perform. The Applicant does not agree to the suggested amendment to sub-paragraph (1) or (2) for the same reasons. The Applicant is amenable to the change to sub-paragraph (6) and this change has been made in the

		and the undertaker must afford such assistance as the host authorities may require reasonably require. (2) The undertaker must submit a draft of any noise envelope review document to the independent air noise reviewer not less than 42 days before the submission of that noise envelope review document for approval pursuant to sub-paragraph (1) of this requirement and at the same time must send copies of those draft documents to the host authorities so they may make comments to the independent air noise reviewer. The independent air noise reviewer must have regard to any comments that it receives from the host authorities and the undertaker must afford such assistance as the host authorities may require reasonably require.	**Note:** the Authorities are considering whether further changes are required to this requirement.	**draft DCO** (Doc Ref. 2.1 v10) submitted at Deadline 8.

		(6) The undertaker must publish on a website (including a page on a website) hosted by the undertaker for that purpose each approved noise envelope review document or extraordinary noise envelope review document within not more than 1445 ~~45~~ days following the date on which those are approved.		
36.	Req. 17 Verification of air noise monitoring equipment	7.—(1) Within not more than six months following the end of the period of 12 months beginning with the commencement of dual runway operations and at 5 yearly intervals thereafter the undertaker must submit to the independent air noise reviewer a noise model verification report and at the same time must send a copy of that report to the host authorities so they may make comments to the	Limited changes to the process which would ensure that host authorities had sight of the documentation and had a consultee role, and shortening of some of the time limits, which appear generous for simple publication of a document. **Note:** the Authorities are considering whether further	Please see the above response regarding "involvement" and the technical nature of the exercise which the CAA are the most appropriate body to perform. The Applicant does not agree to the suggested amendment to sub-paragraph (1) for the same reasons.

		independent air noise reviewer The independent air noise reviewer must have regard to any comments that it receives from the host authorities and the undertaker must afford such assistance as the host authorities may require reasonably require. (2) The undertaker must publish on a website (including a page on a website) hosted by the undertaker for that purpose each noise model verification report submitted to the independent air noise reviewer ~~within~~ not more than 1445 ~~5~~ days after the date of its submission.	changes are required to this requirement.	The Applicant is amenable to change to the number of days and this change has been made in the **draft DCO** (Doc Ref. 2.1 v10) submitted at Deadline 8.
37.	Req. 18 Noise insulation scheme	Placeholder: no amendments suggested at this stage.	Drafting may follow in due course in relation to the time limits in this requirement and to include more detail about what "appropriate steps" are to notify people under paragraphs (2), (3) and (6) and	Amendments have been made to the **Noise Insulation Scheme** (Doc Ref. 5.3) at Deadline 8 which any further comments should first take account of.

			to measure levels of ground noise under paragraph (4). At the very least there should be a definition of “appropriate steps” in the requirement – it should be for the Applicant to come forward with the definition.	It is also not agreed that there should be a definition of "Appropriate Steps". This can most appropriately be agreed in the future when those steps are to be taken and the range of available options at that time is considered.
38.	Req. 19 Airport operations	(1) From the date of the commencement of dual runway operations, the airport may not be used for more than ~~386,000 commercial air transport~~ 389,000 aircraft movements per annum. (5) In this requirement— “aircraft movements” means all aircraft movements with the exception of diverted or emergency flights”; “Code C aircraft” means aircraft with dimensions meeting the	This is to ensure that the cap includes certain non-commercial flights which would not otherwise fall within the definition of “commercial air transport” in requirement 1. It includes, for example, private flights. At full capacity the airport is forecast to handle 386,000 commercial movements, and 389,000 total movements. “aircraft movements” is an industry term which would	As the Applicant explained in its **Response to Deadline 2 Submissions** [REP3-106], the intended scope of the existing definition was to cover all air transport movements save for 'diverted' or 'emergency' flights. Diverted flights have the natural interpretation, and 'emergency' flights are defined in the interpretation provision in paragraph 1 to Schedule 2 of the **draft DCO** (Doc Ref. 2.1). The Applicant had previously explained in response to Action

		maximum specifications of code letter C in the Aerodrome Reference Code table in Annex 14, Volume I to the Convention on International Civil Aviation, as at the date of this Order.	include such “non-commercial” movements. The ExA is referred to : UK airport data notes and FAQs | Civil Aviation Authority (caa.co.uk) The following industry terms are described: Aircraft Movement: Any aircraft take-off or landing at an airport. These could be either commercial or non-commercial flights. For airport traffic purposes one arrival and one departure are counted as two movements. Air Transport Movements: Landings or take-offs of aircraft engaged on the transport of passengers, freight or mail on commercial terms. All	Point 1 of ISH2 [REP1-063] why those should be excluded from the cap figure, and that is unchanged and is maintained in the JLAs' revision. The Applicant is accordingly happy to make this revision to remove any residual ambiguity around the terminology of "air transport movements" (which, as defined by the CAA in the materials cited by the JLAs, inherently assumes transport on commercial terms) and make it clear beyond doubt that any "aircraft movements" on non-commercial terms (but not diverted/emergency flights) are to be subject to a cap that accords with the Applicant's forecast figure. As the JLAs note, the 389,000 figure is consistent with the upper-end forecast figure for all aircraft movements assumed in

			scheduled movements, including those operated empty, loaded charter and air taxi movements are included. **Note:** The Authorities are currently under discussions with the Applicant about flight departure routes. Depending on the outcome of those discussions, the Authorities may include further suggested amendments at D8.	Table 10.1-1 of the **Forecast Data Book** [APP-075].
39.	Req. 20 Surface access	20. From the date on which the authorised development begins the operation of the airport must be carried out in accordance with the surface access commitments unless otherwise agreed in writing with CBC and National Highways in consultation with West Sussex County Council and Surrey County Council.	The Authorities understand that the Applicants will be submitting amendments to this provision at D7, which the Authorities will consider.	The Applicant made this change in version 9 of the **draft DCO** submitted at Deadline 7 [REP7-005].

40.	Req. 23 Flood compensation delivery plan	Placeholder: no amendments suggested at this stage.	The Authorities are considering the arrangements for who should be the discharging authority in this requirement. They should be able to provide an update at D8 and will discuss with the Applicant in the meantime.	The Applicant notes that this requirement has been in the draft DCO since the submission version and it is now Deadline 8 without the JLAs having expressed a settled position on the appropriate discharging authority. The Applicant will continue to work constructively with the JLAs on this, but again notes the limited time remaining in the examination for the Applicant to address points that are yet to be confirmed.
41.	Req. 30 Site waste management plan	Placeholder: no amendments suggested at this stage.	The Authorities are considering whether the identity of the discharging authority for this requirement should be amended.	As per the above, the Applicant will continue to work constructively with the JLAs on this, but again notes the limited time remaining in the examination for the Applicant to address points that are yet to be confirmed.

42.	Req. 32 Western noise mitigation bund	Western noise mitigation bund 32.—(1) The commencement of dual runway operations must not take place until Work No. 18(b) (replacement noise bund and wall) has been completed. (2) Once completed, Work No. 18(b) must not be removed unless otherwise agreed in writing by CBC. (3) No part of Work No. 18 is to commence unless a scheme has been agreed in writing between the undertaker and CBC for the implementation of noise mitigation of no less efficacy than the existing western noise bund for the period between the removal of the existing western noise bund and the completion of construction of the replacement noise bund and wall.	See comments on Work No. 18 above. The Authorities wish to ensure that there will be sufficient protection in the transition phase and that the replacement bund and wall provides at least the same level of mitigation as the existing bund. The Authorities understand that the Applicants will be submitting proposals on the first of those points at D7, which the Authorities will consider.	Please see the Applicant's response in row 13 above which details the measures that control this mitigation measure. For the reasons set out there, the Applicant does not consider that any amendment to requirement 32 (western noise mitigation bund) is required.

		(4) The undertaker must implement the scheme agreed under paragraph (3). (5) The replacement noise bund and wall must be of no less efficacy than the existing western noise bund.		
43.	Sch 11 Part 1 Approval fees	Paragraph 3 (fees) potentially to be removed	The Authorities are preparing proposals for replacement fee recovery arrangements and details of this are contained in the Legal Partnership Authorities' Deadline 7 submission "Response to EXQ2" (DCO.2.23). In the meantime, the most likely position is that the Authorities will ask that paragraph 3 of Schedule 11 be removed. Discussions are ongoing with the Applicant about a fee	The Applicant awaits a full fee proposal from the JLAs and will continue to discuss this with them.

			recovery arrangement outside the DCO.	
44.	Sch 11 Time Limits	**Applications made under requirement** 1.—(1) Where an application has been made to a discharging authority for any agreement, endorsement or approval required by a requirement included in this Order (except where the discharging authority is the independent air noise reviewer, in which case Part 2 of this Schedule has effect in place of this Part), the discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period. (2) For the purposes of sub-paragraph (1), the decision period is—	See previous comments on the length of time that the Authorities will have to deal with what could possibly be a large number of requests and applications coming in an intensive period. Whilst the Authorities welcome the changes that have been made by the Applicant as regards requirement 2A (phasing) and the proposals for a compliance statement, they still consider that a longer time period is justifiable in the case of a limited number of works. In addition, the authorities consider that they should have more time to consider whether further information is necessary and seek a modest extension of one week to the	The Applicant does not consider this new category of works and longer decision period necessary, justified or precedented. The 16-week time period that has been incorporated here applies in a TCPA context to EIA development, to allow the decision-maker to consider the EIA. Here, that process forms part of the DCO examination and does not need to be replicated at the discharge of requirements stage. There is therefore no justification for such a long period at this later stage. Even the JLAs' comments refer to a "13 week determination period" for development that is "major in scale", so it is unclear why, even on the JLAs' position, a

		(a) in the case of requirements in respect of which the discharging authority has a duty under Schedule 2 (requirements) of this Order to consult with any other body— (i) where no further information is requested under paragraph 2, 8 weeks (or in the case of major works, 16 weeks) from the day immediately following that on which the application is received by the discharging authority; (ii) where further information is requested under paragraph 2, 8 weeks (or in the case of major works, 16 weeks) from the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or (iii) such longer period as may be agreed by the undertaker and the	time limit for making such a request. In the list of "major works" the Authorities have included some of the more substantive works, including all those works listed in paragraph 4.3 of REP6-111 as requiring Design Review, These would be 'major in scale' under the Development Management Definition used for planning applications and would normally be subject to a minimum 13 week determination period. There is a placeholder at sub-paragraph (2A)(xii) for others to be added potentially.	16-week time period has been included in the proposed drafting. The reasoning offered by the JLAs for the extended period is that *"the Authorities will have to deal with what could possibly be a large number of requests and applications…"* There may be limited periods during the construction timetable when multiple discharge applications are coming forwards in short succession, but that is why the Applicant is content to resource CBC as lead discharging authority through the entering into of an appropriate fee arrangement (the proposal for which is outstanding from the JLAs, as above). This longer decision period would not address resourcing and would just introduce unnecessary delay.

		discharging authority in writing before the end of the period in sub-paragraph (i) or (ii) (such agreement not to be unreasonably withheld); and (b) in the case of requirements in respect of which the discharging authority has no duty under Schedule 2 of this Order to consult with any other body— (i) where no further information is requested under paragraph 2, 6 weeks (or in the case of major works, 12 weeks) from the day immediately following that on which the application is received by the discharging authority; (ii) where further information is requested under paragraph 2, 6 weeks (or in the case of major works, 12 weeks) from the day immediately following that on which further information has		The JLAs have not advanced DCO precedent for this longer period and are invited to do so if they are to maintain this position.

		been supplied by the undertaker under paragraph 2; or (iii) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in sub-paragraph (i) or (ii) (such agreement not to be unreasonably withheld). (2A) In sub-paragraph (2), "major works" means— (i) Work No. 9 (Works to construct the replacement Central Area Recycling Enclosure (CARE) facility); (ii) Work No. 16 (new hangar); (iii) Work No. 22 (Works associated with the North Terminal building);		

		(iv) Work No. 23 (Works associated with the South Terminal building); (v) Work No. 24 (Works to upgrade the North Terminal forecourt including access roads); (vi) Work No. 25 (Works to upgrade the South Terminal forecourt including access roads); Work No. 26 (Works to construct a hotel north of multi-storey car park 3); (vii) Work No. 27 (Works to construct a hotel on the car rental site); (viii) Work No. 28 (Works associated with the Car Park H Site);		

		(ix) Work No. 29 (Works to convert the existing Destinations Place office into a hotel); (x) Work No. 30 (Works to construct Car Park Y); (xi) Work No. 31 (Works associated with Car Park X) (xii) [Others TBC] (3) ….[no changes proposed] **Further information** 2.—(1) In relation to any application to which this Part of this Schedule applies, the discharging authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.		

		(2) If the discharging authority considers such further information to be necessary and the requirement does not specify that consultation with a requirement consultee is required, the discharging authority must, within 21 ~~14~~ days of receipt of the application, notify the undertaker in writing specifying the further information required. (3) .... [no further changes proposed]		
45.	Sch 12 Non-highway works for which detailed design approval is required	SCHEDULE 12 Non-Highway Works for which Detailed Design Approval is Required ***[List not replicated here]***	See explanations given in Table 1 in Appendix A (Design Note) to the Authorities' response to the ISH8 Action Points [REP6-111]	The Applicant refers to its **Response to Deadline 6 Submissions – Appendix A – Response on Design Matters** [REP7-096] (e-page 27 down) which responds line-by-line to each work proposed to be added to Schedule 12.

<table>
<tr><td></td><td></td><td></td><td></td><td>The Applicant awaits the JLAs' comments on this document at Deadline 8.</td></tr>
<tr><td>46.</td><td>Sch 13

[Informative] Maximum Parameter Heights</td><td>Heading:

~~Informative~~ Maximum Parameter Heights

Insert the following entry:

<table><tr><td>(1) Work No</td><td>(2) Work description</td><td>(3) Maximum building or other works height (m)*</td></tr><tr><td>41(b)</td><td>Works at Pentagon Field to permanently raise the</td><td>4 metres</td></tr></table></td><td>See the Authorities' explanation at D6 [REP6-111] Item 8.

This would need to be accompanied by changes to the parameter plans.</td><td>The JLAs have not advanced any justification for why Schedule 13 must cease to be informative (if that is what is intended by the striking out of the word 'informative' from the schedule heading). The Applicant explained why this is required in its response to DCO.2.4 in the Applicant's Response to ExQ2 [REP7-081] and that position has not changed.

In relation to the specific height restrictions proposed by the JLAs in their drafting:
• as regards Work No. 41(b) (ground raising at Pentagon Field), DLP19 in the Design Principles (Doc Ref. 7.3) already secures a maximum</td></tr>
</table>

		<table><tr><td></td><td>ground level *</td><td></td></tr><tr><td>38(d)</td><td>Undertake earthworks, landscaping and a bund around the southern and eastern perimeter</td><td>Bund 6 metres</td></tr></table> *This reflects the Authorities' proposed amended wording for work 41		height of up to 4m for spoil deposition; and • as regards Work No. 38 (Museum Field), the Applicant is adding to DLP10 in the **Design Principles** (Doc Ref. 7.3) at Deadline 8 to specify that the *"proposed earth bund will have a maximum height of up to 6m (above ground level) and with side slopes of a maximum gradient of 1 in 2.5 gradient".* It is hoped that these changes address the JLAs' concerns in respect of this row in full.
47.	Various Provisions which require local authority approval	**Deeming provisions** The Authorities' primary request is that all the deeming provisions in the various articles mentioned below should be removed. So, for	The Authorities understand that the Applicants are coming forward with amendments at D7 which reflect the Authorities proposals, so these have been submitted on a precautionary basis.	The Applicant refers to its response to the JLAs' comments on Article 56 (deemed consent) above.

		example in article 12, paragraph (4) should be deleted. The second preference is for "or delayed" to be removed from the various articles as set out below. **Article 12(3) (Power to alter layout, etc., of streets)** (3) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority (this consent not to be unreasonably withheld ~~or delayed~~). **Article 14(4) (Temporary closure of streets)** (4) The undertaker must not temporarily alter, divert, prohibit	These amendments tie in with the Authorities' response to ExA question DCO.2.9 about deemed agreement and consent if not given within a certain time. Whilst the Authorities consider that the deeming provisions contained in art. 12(4) and elsewhere are unnecessary, if the ExA are not persuaded, then the Authorities' second preference would be for the words "or delayed" to be removed from those provisions which require that consent must not be unreasonably withheld or delayed. Given the deeming provision, the short periods that the authorities have to respond, and the number of applications that may be made at any one time, the words are unnecessary.	

		the use of or restrict the use of any street— (a) without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld ~~or delayed~~; and (b) unless a temporary diversion to be substituted for it is open for use and has been completed to the reasonable satisfaction of the street authority. **Article 15(1)(c) (Public rights of way – creation, diversion and stopping up)** 15.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development—		

		….. (c) temporarily close public rights of way to the extent agreed with the relevant highway authority and provide substitute temporary public rights of way between terminus points, on an alignment to be agreed with the relevant highway authority (in both respects agreement not to be unreasonably withheld ~~or delayed~~); and **Article 16(2) (Access to works)** (2) The power in paragraph (1) may only be exercised with the consent of the street authority in consultation with the relevant planning authority (such consent not to be unreasonably withheld ~~or delayed~~) provided that no consent is required in respect of airport roads.		

		Article 18(6) (Traffic regulations) (6) The undertaker must not exercise the power conferred by paragraph (3) of this article without the consent of the traffic authority (such consent not to be unreasonably withheld ~~or delayed~~). **Article 24(4) (Authority to survey and investigate the land)** (4) No trial holes, boreholes or excavations are to be made under this article— (a) in land located within a highway boundary without the consent of the relevant highway authority; or (b) in a private street without the consent of the street authority		

		(save for streets within the airport), but such consent must not be unreasonably withheld ~~or delayed~~.		

Part 2 – New Articles and Schedules

Legal Partnership Authorities List of Amendments to the dDCO			The Applicant's Response
Provision	**Amended Text**	**Explanation**	
New article: Permit schemes	The Authorities understand that the Applicant will be putting forward amendments to article 10 (application of 1991 Act) at D7. If the amendments reflect the drafting contained in article 11 of the M25 Junction 10/A3 Wisley Interchange Development	The incorporation of the West Sussex and Surrey permit schemes into the DCO would follow recent precedent (including the two most recent DCOs made in respect of Surrey) and the application of the permit schemes should simplify the processes for street works for both the Applicant and the Authorities.	As above, the Applicant incorporated drafting in article 10 (application of the 1991 Act) in version 9 of the **draft DCO** submitted at Deadline 7 [REP7-005] to incorporate the Surrey and West Sussex permit schemes. This drafting was derived from article 11 of the M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022. The Applicant awaits the JLAs' comments on this drafting at Deadline 8.

	Consent Order 2022, the Authorities are likely to be satisfied.		
New article: Lane rental schemes	**Application of lane rental schemes** [X].—(1) The lane rental regulations apply to the construction and maintenance of the authorised development and must be complied with by the undertaker in connection with the exercise of any powers conferred by this Part. (2) In this article, "the lane rental regulations" means the Street Works (Charges for Occupation	This subject is under discussion with the Applicant, and it is hoped that agreement can be reached. West Sussex County Council and Surrey County Council both have lane rental schemes in place for certain roads and which are used where undertaker carry out works covered by their permit schemes or under s.278 agreements. The Authorities consider that a provision that ensures they also apply to the Applicant in carrying out and maintaining streets under the	As above, the Applicant incorporated drafting in article 10 (application of the 1991 Act) in version 9 of the **draft DCO** submitted at Deadline 7 [REP7-005] to incorporate the Surrey and West Sussex lane rental schemes alongside the permit schemes. This drafting is materially the same as that proposed by the JLAs. The Applicant awaits the JLAs' comments on this drafting at Deadline 8.

	of the Highway) (England) Regulations 2012[1] as they apply in relation to— (a) Surrey County Council in accordance with the Street Works (Charges for Occupation of the Highway) (Surrey County Council) Order 2021[2]; and (b) West Sussex County Council in accordance with the Street Works (Charges for Occupation of the Highway) (West Sussex County Council) Order 2022[3]. [1] S.I. 2012/425 [2] S.I. 2021/402 [3] S.I. 2022/1257	powers of the DCO should be included. The amount that is charged by the Councils is governed by national regulations. The national regulations are the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012[1] And the local regulations (which in turn refer to the two councils' schemes) are— (a) Surrey County Council in accordance with the Street Works (Charges for Occupation of the Highway) (Surrey County Council) Order 2021[2]; and (b) West Sussex County Council in accordance with the Street Works (Charges for Occupation of the Highway) (West Sussex County Council) Order 2022[3].	

		More information about the schemes can be found at this link for Surrey and this link for West Sussex. The West Sussex Scheme is at this link.	
New Part in Schedule 9: Highway Land	The Authorities understand that the Applicants will be submitting revised land plans and a revised book of reference at deadline 7 which may meet the concerns of the Authorities. If the revised plans and book of reference do not satisfy the Authorities, they will put forward drafting at deadline 8 which will reflect paragraph 18 (land) of the protective provisions in Part 3 of Schedule 9 (protective provisions) to the draft DCO.	The Authorities' position on acquisition of highway land was rehearsed at CAH1 and in their post hearing submissions [REP4-056]	The Applicant set out its revised approach to compulsory acquisition of highway land in response to CA.2.4 in the Applicant's **Response to ExQ2** [REP7-080]. The Applicant hopes that this revised approach, coupled with the existing obligation in article 21 (agreements with highway authorities) not to commence a local highway work without having entered into an agreement with the relevant highway authority, will resolve the JLAs' concerns on this point. The Applicant has provided an update in response to **Action Point 3** in the **Applicant's Response to CAH2: Compulsory Acquisition** (Doc Ref. 10.63.1).

Part 3 – New Requirements

Legal Partnership Authorities List of Amendments to the dDCO			The Applicant's Response
Provision	**Amended Text**	**Explanation**	
New Requirement Environmentally Managed Growth	A corrected version of the EMGF Requirement is appended to this submission at **Appendix 1.**	Please see Appendix I to [REP6-100] which sets out the proposed requirement in full. Regrettably there was a technical difficulty when the requirement was transposed from Word to PDF, resulting in the paragraph numbering being lost	The Applicant has provided a response to the JLAs' most recent EMG submission at **Appendix C** to the Applicant's **Response to Deadline 7 Submissions** (Doc Ref. 10.65), in which it reiterates its fundamental opposition to the imposition of such a framework on the DCO. No comment on the drafting of the JLAs' proposed EMG framework is considered necessary on that basis. See also the Applicant's earlier **Response to EMGF** [REP5-074]
New Requirement	**Speed monitoring and mitigation**	WSCC have been in discussions with the Applicant about the Road Safety Audit (RSA) associated with the	The Applicant has agreed to speed limit monitoring through the Road Safety Audit under discussion with National Highways

Speed limit monitoring Strategy	[X].—(1) No part of the authorised development is to commence until written details of a speed limit monitoring strategy for Airport Way and London Road (A23) has been submitted to and approved in writing by West Sussex County Council [and National Highways]. (2) The speed limit monitoring strategy must include— (a) as a minimum, one survey to be carried out before construction of the authorised development commences and two surveys to be carried out after completion of the highway works, to assess the changes in traffic speed on	highway works. In relation to Problem 3.1 in the RSA that related to reductions to speed limits on Airport Way and London Road, GAL have stated, "The mitigations proposed as part of the scheme and broader relevant site considerations summarised below, for each link, are considered to be sufficient mitigations at this project stage. However, it is acknowledged that in line with standard practice, speed compliance will be subject to post opening monitoring and additional measures (including speed cameras) could be considered at that stage if deemed necessary. Such measures could be	and the local highway authorities and does not consider that this need be secured through the requirements in the DCO. However, if the JLAs feel strongly that this is necessary, the Applicant is willing to adopt a form of requirement, and has done so as new requirement 38 (speed limit monitoring) in the **draft DCO** submitted at Deadline 8 (Doc Ref. 2.1 v10). This requirement differs from the JLAs; proposed drafting in a couple of ways. First, it is not appropriate for the speed limit monitoring strategy to be submitted for approval prior to commencement of the authorised development as a whole. Such a strategy need only be submitted for approval prior to commencement of the highway works. Further, it is not appropriate to be overly prescriptive as to actions to be taken if the

	the local [and strategic] highway network; (b) the locations to be monitored and the methodology to be used to collect the required data; (c) the periods over which traffic is to be monitored; (d) the submission of survey data and interpretative report to West Sussex County Council [and National Highways]; and (e) a mechanism for the future approval of additional mitigation measures together with a programme for their implementation. (3) The scheme approved under sub-paragraph (1)	accommodated within the DCO site boundary." The Applicant also goes on to state: "Road user speeds will be subject to monitoring following completion of the scheme. If the average (mean) speed when the revised A23 London Road comes into operation is at or above 46mph (based on the WSCC policy guidance for a 40mph speed limit) further supporting measures shall be considered with due consideration of potential measures such as additional signage and road marking measures outlined in Table 3 of the West Sussex Speed Limit Policy 2022/2023 that may be considered to be	monitoring shows that there is unanticipated speeding. Hence, the wording of sub-paragraph (e) of the JLAs' proposed drafting has been slightly tweaked.

	must be implemented by the undertaker.	appropriate for implementation at this location." The requirement is intended to ensure that the monitoring and potential mitigation are secured.	
New requirement: Air Quality Monitoring	**Air quality monitoring** [X] - (1) No part of the authorised development shall commence until a plan has been agreed between undertaker and CBC for the carrying out by CBC of monitoring and reporting on the level of NOx/NO2, PM10 and PM2.5 at the CBC monitoring location. (2) The plan under sub-paragraph (1) must provide- (a) that on or before the date on which	See paragraph 3.4.3 of the Authorities' update on progress on legal agreements at deadline 6 [REP6-112] Discussions are ongoing with the Applicant about recovery of costs generally, including air quality monitoring costs.	Please see the Applicant's response to the ExA's proposed draft requirement on the same topic in Appendix A to the **Written Summary of Oral Submissions ISH9: Mitigation** (Doc Ref. 10.62.2).

	the authorised development is commenced and annually thereafter the undertaker shall pay CBC the air quality monitoring contribution; (b) that the air quality monitoring contribution shall be used by CBC for the cost of monitoring and reporting on the level of NOx/NO2, PM10 and PM2.5 at the CBC monitoring location as follows- (i) data management		

	and audit costs; (ii) local service operator duties; (iii) the cost of servicing the monitoring equipment; (iv) the operational costs and maintenance costs associated with the monitoring equipment; (v) the cost of a member of CBC staff employed to		

	make visits associated with the equipment in order to properly monitor, maintain and report on the same; and (vi) other ancillary work connected to the air quality monitoring as deemed appropriate by CBC. (3) From the date on which the authorised development is commenced, CBC may submit a repair or replace		

	request in writing to the undertaker when any of the air quality monitoring equipment at the CBC monitoring location requires to be repaired or replaced. (4) Within 30 working days of receipt of a repair or replace request from CBC pursuant to sub-paragraph (3), the undertaker must either- (a) pay CBC the repair or replace contribution specified within the repair and replace request; or (b) agree with CBC that the undertaker will carry out the repair and/or		

	replacement works as set out in the relevant repair or replace request and a proposed timescale. (5) Where the repair or replace request submitted by CBC requires that the contribution is required to replace air quality monitoring equipment in accordance with CBC's programme of replacement, it shall not be open for the undertaker to suggest that CBC instead repairs the relevant air quality monitoring equipment. (6) Where it is agreed pursuant to sub-paragraph (4)(b) that the undertaker shall carry out the repair		

	and/or replacement works, and upon receipt of not less than 2 working days' notice, CBC shall provide the undertaker all necessary permissions (in so far as CBC has the capacity to do so) to access the relevant CBC monitoring location. (7) in this paragraph- "air quality monitoring contribution" means a sum to cover the actual cost incurred by to be paid within 30 working days of receipt of an invoice and used in accordance with sub-paragraph (2)(b); "the CBC monitoring location" means the location shown such location as shown on the [name to be agreed] plan[1] between GAL		

	and CBC from time to time in writing; "CBC's programme of replacement" means the following replacement cycle for the CBC monitoring location— (a) FIDAS Particulate Monitor: replace in 2030, 2040 and 2050; (b) NOX analyser: replace in 2026, 2036 and 2046; (c) Cabinet with aircon: replace in 2030, 2040 and 2050.		

	"repair or replace request" means a request by CBC to GAL for the value of— (a) replacing air quality monitoring equipment in accordance with CBC's programme of replacement; or (b) otherwise repairing faulty equipment at the CBC monitoring locations (or any one of them); "repair or replace contribution" means a sum being the value as specified in a relevant repair or replace request or such other sum as is agreed in writing with CBC in its sole		

	discretion and which shall be used by CBC either— (a) in accordance with CBC's programme of replacement for the purposes of replacing air quality monitoring equipment; or (b) for such other repairs to air quality monitoring equipment as may be appropriate; [1] There will need to be a definition in article 2(1) interpretation and referred to in Schedule 14 (documents to be certified)		

New requirement: Odour management	**Odour management and monitoring plan** [X] - (1) No part of the authorised development is to commence unless an Odour Management and Monitoring Plan (OMMP) to ensure the management of aviation fuel odour and other odour emissions at the Horley Gardens Estate has been agreed in writing between the undertaker and CBC in consultation with RBBC. (2) The OMMP should be based on best practice and include: (a) a two stage study to: (i) determine the ambient concentrations of an appropriate marker for aviation fuel at which fuel	See paragraph 3.4.2 of the Authorities' update on progress on legal agreements at deadline 6 [REP6-112]	Please see the Applicant's response to the ExA's proposed draft requirement on the same topic in Appendix A to the **Written Summary of Oral Submissions ISH9: Mitigation** (Doc Ref. 10.62.2).

	odours are perceived on the Horley Gardens Estate; (ii) if the concentrations of the marker determined in sub-paragraph (i) exceed the limit of detection of a suitable field based monitor then such equipment is to be installed at an agreed location for a 1 year period to enable the examination of the distribution of events giving rise to aviation fuel odour; (b) procedures for recording, reviewing monitoring results and adjusting mitigation; (c) procedures for data sharing with the host authorities and reporting to the host authorities;		

	(d) a complaints and resolution process; (e) a communications and engagement plan; and (f) any proposed odour mitigation measures. (3) The undertaker must implement the OMMP agreed under paragraph (1).		
New requirement: Ultrafine particulates	A proposed requirement is under consideration and depending on the outcome of the s.106 negotiations may be included at D8.	See paragraph 3.4.1 of the Authorities' update on progress on legal agreements at deadline 6 [REP6-112] Discussions are ongoing with the Applicant about recovery of costs generally, including ultrafine particulate monitoring costs.	The Applicant's position remains that this is unnecessary as set out in response to **Action Point 17** in the **Applicant's Response to Actions ISH7: Other Environmental Matters** [REP4-037].

New requirement: Ground noise management plan	A new requirement is under consideration and may be included at D8.	This issue is explained in the West Sussex Authorities LIR [REP1-068] at page 234. The idea is that the plan would operate in a complimentary fashion to the noise envelope. As explained in the LIR, the plan would need to include: • Predictive ground noise contours for each year. • Verification monitoring and confirmatory actual ground noise modelling. • A list of all mitigation, be they operational, physical, technological or any other mitigation. • Performance standards for the mitigation and how the performance standards are enforced. • Engagement process for monitoring and reporting to LPA and	Adverse effects from ground noise are mitigated by both existing and proposed ground noise management practices and the design of the Project as described in **Appendix B of Supporting Noise and Vibration Technical Notes to Statements of Common Ground** [REP3-071]. For example, engine ground runs are limited in number by the proposed **draft Section 106 Agreement** [REP6-063] and can only take place during the day unless in an emergency. The airport has extensive noise bunds and walls around the east and north sides, and the noise bund in the western end will be reconfigured as part of the Project. This approach to mitigation is consistent with policy to mitigate adverse effects as far as practicable in the context of government policy on sustainable economic development. Such ground-based noise mitigation measures are effective for ground noise because ground noise propagates close to the ground. Noise

		incorporating feedback including undertaking of further studies and provision of additional mitigation.	Insulation for ground noise is also provided for the in the Noise Insulation Scheme Document (Doc Ref. 5.3). The Applicant has committed to measures to mitigate adverse effects of ground noise, and there is not any need for a ground noise mitigation plan to further detail the ground noise mitigations which are already secured.
New requirement: Community Annoyance	**Aviation noise attitudes surveys** [X] - (1) In the event that an ANAS follow up survey has not been published by the Secretary of State or the CAA by the end of 2036, the undertaker must commence an airport-specific follow up survey within 6 months of the date of the third anniversary of the commencement of dual runway operations (if that	See paragraph 3.5.1 of the Authorities' update on progress on legal agreements at deadline 6 [REP6-112]	The Applicant does not agree to this proposed requirement. The surveys undertaken by the CAA and when they are published are a matter for the CAA, and not the Applicant. Moreover, there is no need for the Applicant to undertake any such survey in connection with the operation of the Project.

	date is after the end of 2036). (2) The undertaker must publish the airport-specific follow up survey on its website and provide a copy of it to those host authorities which are district councils. (3) In this paragraph— "ANAS follow up survey" means a noise attitudes survey carried out or commissioned by the Secretary of State or the CAA which is a follow up survey to the survey known as the Aviation Noise Attitudes Study (ANAS) 2024, that the Civil Aviation Authority has been commissioned by the Department for Transport to conduct and at the time of		

	the making of this Order was conducting; "airport-specific follow up survey" means a noise attitudes survey to be carried out in relation to Gatwick Airport by the undertaker which follows the methodology used in the Aviation Noise Attitudes Study (ANAS) 2024. Any deviations from the methodology used in the Aviation Noise Attitudes Study (ANAS) 2024 are to be agreed in writing with the host authorities.		
New requirement: Night time noise cap	A new requirement is under consideration by the Authorities and may be included at D8.	As set out in paragraph 12.189 of the Joint Surrey Local Impact Report [REP1-098], the Authorities consider that this Requirement is necessary to ensure that the night noise levels are as modelled in	As set out in multiple previous submissions it is not necessary or appropriate to secure existing legislative processes through requirements in a DCO. Existing legislative regimes can be assumed to continue in operation and to be effective, and it would also be wholly

		chapter 14 of the Applicant's Environmental Statement, which assumes that the current Department for Transport core night movement cap remains in place. • In paragraph 14.12.24 of chapter 14 [APP-039], the Applicant states that '*There is an assumption that for the 42 years beyond 2047 noise levels are assumed constant in order to arrive at a 60-year discounted appraisal result.* • In paragraph 14.13.21 of chapter 14 [APP-039]) the Applicant states: '*Noise changes at night would be lower than during the day because it is assumed that the current night*	inappropriate to seek capture these DfT controls in a DCO requirement and create a system where inconsistency may arise if there is any future change to those. The Applicant notes that an 8 hour night noise envelope will be set, which has of course assumed the continuation of the night noise controls. Where needed this should provide the JLAs with comfort that necessary controls are secured via the DCO requirements.

		restrictions would continue to cap aircraft numbers in the 23:30-06:00 hours period'. In view of the government's consultation on the movement cap and the potential for the nighttime movement gap at Gatwick Airport to change in October 20254, the Authorities consider the current movement cap should be included in the dDCO by way of a requirement.	
New requirement: Noise action plan	A new requirement is under consideration by the Authorities and may be included at D8.	The Authorities understand that the Requirement to Produce a Noise Action Plan ("NAP") is a regulatory requirement under the Environmental Noise (England) Regulations 2006. Nonetheless – as measures included in the NAP form part of the Applicant's embedded	As set out in multiple previous submissions is not necessary or appropriate to secure existing legislative processes through requirements in a DCO. Existing legislative regimes can be assumed to continue in operation and to be effective.

		mitigation – the Authorities are considering whether a requirement should be included in the dDCO which states that, in the event that the NAP is replaced, any future NAP shall secure the same level or more mitigation as the NAP at the date of the DCO and if the obligation to produce a NAP ceased, GAL would provide the same level of mitigation in any event.	
Landscape and Ecology Enhancement Fund/Project officer	A new requirement and/or draft unilateral undertaking is under consideration by the Authorities and depending on the outcome of the s.106 negotiations may be included at D8.	See paragraph 3.5.2 of the Authorities' update on progress on legal agreements at deadline 6 [REP6-112]	The Applicant maintains that such a DCO requirement is not required. Within the Project significant measures are secured to improve the landscape and ecology of the area surrounding the airport. Further, the contribution to Gatwick Greenspace Partnership is to support development of the landscape and ecology in the surrounding area. Landscape and ecology projects which are for the public benefit could also be

			eligible for funding through the London Gatwick Community Fund. The Applicant sees benefit in coordinating efforts in this area rather than setting up a series of separate funds. Ecological impacts of the Project that extend beyond the project boundary have been assessed in **ES Chapter 9: Ecology and Nature Conservation** [APP-034]. As no effects were identified this is not considered necessary.
New requirement: Tree replacement	**Tree replacement** [X] - (1) The undertaker must provide the total number of trees as calculated by the tree mitigation contribution formula as part of the authorised development or (if necessary) pay the tree mitigation contribution. (2) Prior to the commencement of any part or parts of the authorised	See paragraph 3.5.1 of the Authorities' update on progress on legal agreements at deadline 6 [REP6-112]	See the Applicant's response to **Action 22** in the **Applicant's Response to Actions ISH9: Mitigation** (Doc Ref. 10.63.2)

	development the undertaker must submit to CBC a landscaping plan and tree schedule for written approval by CBC and must not commence that part or parts of the authorised development until the landscaping plan and tree schedule for that part has been approved by CBC in writing. (3) The undertaker must plant the trees as shown on the approved landscaping plan and tree schedule as part of the authorised development in accordance with the timetable set out in the approved landscaping details plan and tree schedule and notify CBC in writing when these have been planted.		

	(4) In the event that the approved landscaping plan and tree schedule identifies that the total number of trees to be provided as part of the authorised development is less than that required by the application of the tree mitigation contribution formula, the undertaker must pay the tree mitigation contribution to CBC before the commencement of the part of the authorised development which will result in the loss of the tree in question and shall not commence that part of the authorised development until it has paid the tree mitigation contribution to CBC. (5) In this paragraph- "landscaping plan and tree schedule" means a plan showing the landscaping		

	details of the relevant part of the authorised development to include a schedule setting out the number and description of all existing trees to be removed (based on the information supplied pursuant to requirement 28) and the number, species and size of all new trees to be planted as part of the authorised development with a timetable for the planting of the new trees; "tree mitigation contribution" means the sum sought pursuant to Policy CH6 of the CBC development plan (or any replacement policy) and calculated in accordance with the tree mitigation contribution formula to be paid to CBC to be used towards the provision of tree planting and maintenance in the borough		

	of Crawley or within the area of host authority which is a district council; "tree mitigation contribution formula" means the formula as set out in CBC's Green Infrastructure Supplementary Planning Document or any document replacing it containing a formula for the payment of contributions towards providing replacement trees.		
New requirement: Hotel parking	Hotel parking [X]—(1) No provision is to be made at the specified hotels for parking other than parking for disabled staff and disabled visitors and for maintenance and servicing vehicles that are required for the operation of the hotel.	This requirement has been added as an alternative way in which to address the Authorities' concerns about the lack of detail in the descriptions of some of the hotels which are listed in Schedule 1. It would place limitations on the provision of parking at the	The Applicant has included a new requirement in the **draft DCO** (Doc Ref. 2.1) submitted at Deadline 8 setting an overall cap on the number of car parking spaces provided within the Order limits. As a result, the Applicant does not consider it necessary to include a requirement in the draft DCO restricting parking specifically in relation to hotels.

	(2) No provision is to be made at the specified hotels for commuter, staff or customer parking other than for disabled persons. (3) In this paragraph, the "specified hotels" means the hotels described in— (a) Work No. 26; (b) Work No. 27; (c) Work No. 28(a).	hotels listed in sub-paragraph (3) of the proposed requirement.	
New requirement: Housing provision/fund	A new requirement and/or draft unilateral undertaking is under consideration by the Authorities and depending on the outcome of the s.106 negotiations may be included at D8.	See paragraph 3.7.1 of the Authorities' update on progress on legal agreements at deadline 6 [REP6-112].	The Applicant maintains that such a DCO requirement is not required. The Applicant's position is set out further in the **Written Summary of Oral Submissions ISH9: Socio-economics** (Doc Ref. 62.4)

1.3 CAGNE – Responses to ExQ2 and comments on Deadline 6 submissions [REP7-129]

1.3.1 This section sets out the Applicant's response to the points raised under the heading 'DRAFT DCO' in CAGNE's above submission.

Air quality

1.3.2 In relation to CAGNE's comment that air quality provisions should be included in the draft DCO, please see the Applicant's response to the ExA's proposed draft requirement on this topic in **Appendix A** to the **Written Summary of Oral Submissions ISH9: Mitigation** (Doc Ref. 10.62.2).

Requirement 31(3) and tailpieces

1.3.3 CAGNE has commented on the drafting in requirement 31(3) allowing an alternative to Work No. 44 (wastewater treatment works) to come forward if agreed in writing by Thames Water Utilities Limited ("**TWUL**"). Requirement 31(3) has been added in square brackets to reflect that the provision of an on-airport wastewater treatment facility ("**WWTW**") is an 'alternative' option, were the Secretary of State to be minded to include a provision in the draft DCO that no airport growth arising from the Project can be implemented until modelled wastewater flows have been agreed by TWUL and any necessary upgrade works to TWUL's network and processing facilities have been implemented. If the Secretary of State is not minded to include a restriction of the nature sought by TWUL in the DCO, the square bracketed drafting can be removed from the DCO. If the Secretary of State retains the square bracketed text in the made DCO, the drafting of Requirement 31(3) allows for TWUL to agree that the on-airport WWTW need not be delivered. This provides flexibility for an alternative solution for the delivery of any required upgrades to TWUL's local wastewater network to be agreed between the Applicant and TWUL, rather than obliging GAL to deliver the on-airport WWTW, meaning that a solution that is preferrable for both parties can be agreed. This means that TWUL, as the relevant statutory sewerage undertaker, retains the flexibility to agree to an alternative solution which is preferable to

the on-airport WWTW in enabling TWUL to discharge its statutory undertaking, meaning that the Secretary of State can be confident that it will continue to address impacts the alternative was otherwise proposed to do. The Applicant notes that it clarified its position on this matter in Issue Specific Hearing 9 – please see the **Applicant's Written Summary of Oral Submissions ISH9: Mitigation** (Doc Ref. 10.62.2).

1.3.4 The Environmental Statement did not assess the alternative solution of the on-airport WWTW, however, the environmental information submitted as part of the **Second Change Application Report** [REP6-072] clarifies that this change to the Project would not give rise to any new or different likely significant environmental effects as compared to the Project assessed in the Environmental Statement. On this basis, the Applicant is confident that the scenarios of delivery of the WWTW and non-delivery (which implicitly includes TWUL and GAL agreeing a different solution pursuant to the tailpiece to requirement 31(3)) have been adequately assessed in the Environmental Statement.

1.3.5 In relation to the lawfulness and appropriateness of wording providing for details / actions to be *"otherwise agreed"* with a particular discharging authority (which can be called a 'tailpiece') more generally, the Applicant refers to its response to DCO.1.40 in the **Applicant's Response to ExQ1** [REP3-089]. The Applicant is aware of the principle and authority that CAGNE cites and it is for this reason that paragraph 1(4) of Schedule 2 to the **draft DCO** (Doc Ref. 2.1) provides that:

"Where submitted details or actions can be "otherwise agreed" by a discharging authority pursuant to requirements 4, 5, 7, 8(4), 10(3), 11(3), 12(3), 13(3), 14(1), 14(2), 20, 21, 22(3), 23(2), 24, 25(3), 27(3), 28(3), 29(3), 30(3), [31(3)] and 32(2) such agreement is not to be given by the discharging authority save where it has been demonstrated to the satisfaction of the discharging authority that the departure from the previously certified or approved document, details or obligation does not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement."

1.3.6 Requirement 31(3) is cited in that list and therefore TWUL could only agree an alternative to the obligation on the undertaker to deliver the wastewater treatment works if it had been demonstrated to TWUL's satisfaction (as the

responsible statutory undertaker) that this alternative would not give rise to materially new or materially different environmental effects. This is very likely to be the case for any alternative solution, for the reason given above.

1.3.7 This ensures that the provision is in full compliance with the principle set out in the case law cited in CAGNE's submission. Both of the cases cited related to tailpieces that allowed development to be built out that went beyond the development that had been applied for and, vitally, that had been assessed for environmental impacts. Here that is not the effect of the tailpiece wording, which has been carefully considered in the context of the interpretative provisions of the draft DCO.

1.3.8 CAGNE cites the *Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects.* The passage cited contains implicit support for the inclusion of tailpieces in requirements in certain circumstances (i.e. with adequate contextual controls), saying that requirements should *"not prevent the discharging authority from approving details which would lead to environmentally better outcomes where appropriate".* The combination of article 2(9) and paragraph 1(4) of Schedule 2 to the draft DCO ensure that this intention is given effect.

Article 9 – Planning permission

1.3.9 The Applicant refers to and maintains the explanation provided for this article in paragraph 4.31 – 4.43 of the **Explanatory Memorandum** [REP7-007]. The drafting makes provision to address any uncertainty arising from the decision in *Hillside*, which in any event related to planning permissions under the Town and Country Planning Act 1990 rather than development consent orders. Drafting that ensures clarity where potential uncertainty has been introduced by judicial decisions does not constitute an attempt *"to disapply the law"* set out in said decisions.

1.4 National Highways – Responses to ExQ2 [REP7-115]

WQ No	ExA question	NH response	Applicant further comment
DCO.2.13	Art. 27 (Compulsory acquisition of land) The Applicant and NH disagree about the inclusion of 'use' within Art. 27. What specific change would NH wish to see in this article and why? Is the inclusion of 'construction, operation and maintenance in Art. 27(1) necessary/appropriate?	National Highways notes that the Applicant is seeking a wide power to "use" any land acquired for any other purposes in "connection with or ancillary" to its undertaking. The Applicant is seeking permanent powers over parts of the Strategic Road Network (SRN) (i.e. parts of the M23). This broad wording implies that the Applicant may be able to acquire parts of the SRN for highway works and then subsequently or separately use them for airport related purposes. This is unacceptable and significantly out of sync with the need to acquire proportionate powers. If land	Article 27(1)(b) 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. 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

		belonging to National Highways is acquired, it should only be used for the works specified to occur on the land as part of the DCO application (as set out in Schedule 1 to the draft DCO and in the Works Plans). National Highways accordingly requests the removal of article 27(1)(b) which is unprecedented in other airport DCOs. National Highways supports the use of "construction, operation and maintenance" in article 27(1)(a) as this text clarifies the purposes the Applicant is using to acquire land.	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. 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. In any event, the Applicant hopes that the change to its approach to compulsory acquisition powers sought over the SRN set out in its response to CA.2.4 in the **Applicant's Response to ExQ2** [REP7-080] will address National

			Highways' concern in this regard and allow it to drop its objection to this wording.