

Further Representation at Deadline 9 on behalf of Marathon Asset Management MCAP Global Finance (UK) LLP ("MAM")

1 UPDATE ON POSITION

- 1.1 As the ExA is aware, Gatwick Airport Limited and MAM have been engaged in discussions regarding a commercial agreement to address the matters identified by MAM in their representations and submissions to the DCO Examination to date. Both parties are pleased to confirm that Heads of Terms for that agreement have now been agreed.
- 1.2 MAM highlighted and indicated in its post-hearing submission concerning CAH2 which was submitted at Deadline 8 that in circumstances where agreement is not reached prior to the end of the examination, MAM reserve the right to make further submissions, including the provision of draft proposed protective provisions and supporting justification to the Secretary of State, to supplement the representations and submissions made to the DCO Examination.

2 PROPOSED PROTECTIVE PROVISIONS

- 2.1 Despite the efforts of both parties it increasingly clear that it is very unlikely that the commercial agreement will be concluded by the end of the Examination. Accordingly, we append to this representation the draft proposed protective provisions which MAM would request are included in the Development Consent Order in order (if made) to protect MAM's interests should the Order be made in circumstances where the agreement had not been satisfactorily concluded between the parties.
- 2.2 If it becomes necessary, in the circumstances contemplated above, for MAM to request the protective provisions, MAM will write to the Secretary of State to request that the provisions be included in the Development Consent Order (if made) including the justification for doing so.
- 2.3 For the avoidance of doubt we would reiterate that the parties are working collaboratively and positively towards completion of the contemplated commercial agreement and we expect the agreement will be completed in due course. The provision of the draft protective provisions at Deadline 9 and the possible submission of future representations to the Secretary of State is a fall back option and position should, against expectation, the commercial agreement not be completed in sufficient time to protect MAM's interest and position prior to the DCO decision being made by the Secretary of State.

Bryan Cave Leighton Paisner LLP

21 August 2024

PROTECTIVE PROVISIONS

PART 4

FOR THE PROTECTION OF HI (LONDON GATWICK) LIMITED AND HICP LIMITED

Application

1. For the protection of Holiday Inn the following provisions, unless otherwise agreed in writing at any time between the undertaker and Holiday Inn, have effect.

Interpretation

2. In this Part of this Schedule—

“commence” means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development and includes operations consisting of—

- (a) remedial work in respect of any contamination or adverse ground conditions;
- (b) environmental (including archaeological) surveys and investigation;
- (c) investigations for the purpose of assessing ground conditions;
- (d) site or soil surveys;
- (e) erection of fencing to site boundaries or marking out of site boundaries;
- (f) removal of hedgerows, trees and shrubs;
- (g) installation of amphibian and reptile fencing;
- (h) the diversion or laying of services;
- (i) ecological mitigation measures;
- (j) receipt and erection of construction plant and equipment;
- (k) erection of temporary buildings and structures;
- (l) site preparation and site clearance;
- (m) establishment of construction compounds;
- (n) establishment of temporary haul roads; and
- (o) the temporary display of site notices, advertisements or information;

“existing Holiday Inn access” means the vehicular access to the hotel on the date of this Order on land given plot reference numbers 11/031, 1/042, 1/057 in the book of reference and shown on the land plans;

“Holiday Inn” means—

- (p) HI (London Gatwick) Limited, a company incorporated and registered in England and Wales with company registration number 04721762 and having its registered office at St James House 3rd Floor, South Wing, 27-43 Eastern Wing, Romford, Essex, United Kingdom, RM1 3NH; and
- (q) HICP Limited, a company incorporated and registered in England and Wales with company registration number 09450061 and having its registered office at St James House 3rd Floor, South Wing, 27-43 Eastern Wing, Romford, Essex, United Kingdom, RM1 3NH;

“Holiday Inn land” means the land edged red on the Holiday Inn land plan;

“Holiday Inn land plan” means the official copy of title plan for title number SY836088 held by Land Registry on the date of this Order;

“Holiday Inn works area” means the land given plot reference numbers 1/026, 1/042, 1/507, 1/061, 1/062, 1/072, 1/067, 1/073, 1/075 in the book of reference and shown on the land plans;

“hotel” means the hotel located on the Holiday Inn land;

“Longbridge Roundabout Junction improvements” means that part of the authorised development comprised in Work No. 37 and any ancillary or related development in connection with it referred to in paragraphs (a) to (s) beneath the heading “Ancillary or Related Development” of Schedule 1 (authorised development);

“northern access solution drawings” means the drawings—

(a) entitled Holiday Inn Access Sketch Vehicle Tracking Sheet 3 with drawing number 41700-LJ-C-HAC-SK-200006-P02 and dated 18 June 2024; and

(b) entitled Holiday Inn Access Sketch Vehicle Tracking Sheet 2 with drawing number 41700-LJ-C-HAC-SK-200005-P02 and dated 17 June 2024,

and in each case certified as such by the Secretary of State under article 52 (certification of documents, etc.).

“permanent Holiday Inn access” has the meaning given in paragraph 5(4)5(1);

“temporary Holiday Inn access” has the meaning given in paragraph 5(1);

“undertaker” has the meaning given in article 2 (interpretation) and includes any agents, contractors or subcontractors acting on behalf of the undertaker;

“working day” means any day other than a Saturday, Sunday or English bank or public holiday.

Written agreement of Holiday Inn

3.—(1) Subject to sub-paragraph (2), the undertaker must not exercise any powers pursuant to this Order or the powers conferred by section 11(3) of the 1965 Act (powers of entry), and such powers have no effect, in respect of Holiday Inn’s interests in the Holiday Inn land, the interests of any person deriving title from Holiday Inn in relation to the Holiday Inn land and any other tenants or occupiers of the Holiday Inn land or those interests which benefit any of the aforementioned interests, including all rights, wayleaves and easements enjoyed by Holiday Inn, or any person deriving title from it, in relation to the Holiday Inn land including pursuant to—

- (a) article 22 (discharge of water);
- (b) article 23 (protective work to buildings);
- (c) article 24 (authority to survey and investigate the land);
- (d) article 25 (felling or lopping trees and removal of hedgerows);
- (e) article 27 (compulsory acquisition of land);
- (f) article 28 (compulsory acquisition of rights and imposition of restrictive covenants);
- (g) article 30 (statutory authority to override easements and other rights);
- (h) article 35 (acquisition of subsoil or airspace only);
- (i) article 36 (rights under or over streets);
- (j) article 37 (temporary use of land for carrying out the authorised development);
- (k) article 39 (temporary use of land for maintaining the authorised development);
- (l) article 45 (use of airspace within the Order land),

unless the exercise of such powers is in accordance with the written agreement of Holiday Inn.

(2) If any part of the Holiday Inn works area is acquired under this Order by way of a general vesting declaration, which must be with the written agreement of Holiday Inn to which sub-paragraph (1) refers, then the undertaker must at the same time as the making of that general vesting declaration enter into a deed of grant of rights back to Holiday Inn in respect of services in a form agreed with Holiday Inn (such approval not to be unreasonably withheld or delayed).

(3) The undertaker must not at any time with or without vehicles enter upon any part of the Holiday Inn land except, on the terms of this Part of this Schedule, the Holiday Inn works area.

Noise and vibration

4.—(1) The undertaker must not commence the Longbridge Roundabout Junction improvements or any part of the authorised development within the Holiday Inn works area until it has submitted to Holiday Inn a detailed noise and vibration management scheme in respect of those parts of the authorised development and the scheme has been approved by Holiday Inn (such approval not to be unreasonably withheld or delayed); and the undertaker must comply with the approved scheme.

(2) The noise and vibration management scheme must include—

- (a) identification of base line noise and vibration levels on the Holiday Inn land;
- (b) predicted maximum noise and vibration levels during the carrying out of the Longbridge Roundabout Junction improvements or any part of the authorised development within the Holiday Inn works at agreed receptor sites, which the undertaker must not exceed;
- (c) attenuation measures which the undertaker must take to minimise noise and vibration resulting from the carrying out of the carrying out of the Longbridge Roundabout Junction improvements or any part of the authorised development within the Holiday Inn works including any equipment in use during out-of-hours working in the event of emergency; and
- (d) steps for monitoring noise and vibration levels during the carrying out of the carrying out of the Longbridge Roundabout Junction improvements or any part of the authorised development within the Holiday Inn works to ensure that the predicted maximum noise and vibration levels referred to in paragraph (b) are not exceeded and that the attenuation measures referred to in paragraph (c) are effective.

(3) Where the noise and vibration levels at a receptor site identified in an approved vibration management scheme show any exceedance of the maximum noise and vibration levels in that scheme, the undertaker must immediately cease the carrying out of the Longbridge Roundabout Junction improvements or any part of the authorised development within the Holiday Inn works area and, before recommencing the Longbridge Roundabout Junction improvements or any part of the authorised development within the Holiday Inn works area, submit to Holiday Inn for approval (not to be unreasonably withheld or delayed) a mitigation plan detailing steps to ensure that the exceedance will not reoccur and the timetable for taking such steps; and the undertaker must comply with the approved mitigation plan.

Access

5.—(1) The undertaker must not stop up the existing Holiday Inn access or close, alter, divert or restrict the use of any part of the A217 or A23 required for vehicular access to or from the hotel or commence the Longbridge Roundabout Junction improvements or any part of the authorised development within the Holiday Inn works area until—

- (a) the undertaker has submitted to Holiday Inn written details of a proposed temporary Holiday Inn access and the details have been approved by Holiday Inn (such approval not to be unreasonably withheld or delayed) and such details must include a detailed layout and design of the temporary Holiday Inn access including in respect of any footings, drainage, structural matters, materials and finish; and
- (b) the undertaker has at its own cost obtained all consents, licences, permissions, approvals, agreements and authorisations required for the temporary Holiday Inn access and provided it in accordance with them and the details approved by Holiday Inn to the reasonable satisfaction of Holiday Inn.

(2) Without prejudice to the generality of sub-paragraph (1), the temporary Holiday Inn access must—

- (a) accommodate a volume of pedestrian and vehicular traffic no less than that of the existing Holiday Inn access on the date of this Order for the purposes of accessing and servicing the hotel;
- (b) be capable of accommodating the Hoppa Bus (including any shuttle service between the hotel and Gatwick Airport) and heavy good vehicles; and
- (c) be contiguous with public highway maintainable at the public expense which has not been stopped up temporarily, closed, altered, diverted or had its use restricted.

(3) Without prejudice to the approval by Holiday Inn of any detailed layout and design and the necessity of meeting the requirements of sub-paragraph (2), it will be unreasonable for the purposes of sub-paragraph (1)(a) for Holiday Inn to withhold its approval of the principle of a proposed temporary Holiday Inn access which accords with the northern access solution drawings.

(4) The temporary Holiday Inn access provided pursuant to sub-paragraph (1)(b) must be retained and maintained by and at the expense of the undertaker until—

- (a) the undertaker has submitted to Holiday Inn written details of a proposed permanent Holiday Inn access and the details have been approved by Holiday Inn (such approval not to be unreasonably withheld or delayed) and such details must include a detailed layout and design of the permanent Holiday Inn access including in respect of any footings, drainage, structural matters, materials and finish;
- (b) the undertaker has at its own cost obtained all consents, licences, permissions, approvals, agreements and authorisations required for the permanent Holiday Inn access and provided it in accordance with them and the details approved by Holiday Inn to the reasonable satisfaction of Holiday Inn;
- (c) the undertaker has granted to Holiday Inn all such rights as are reasonably necessary for use of the permanent Holiday Inn access for the purposes of accessing and servicing the hotel or it is comprised in public highway maintainable at the public expense; and
- (d) such reinstated access is contiguous with public highway maintainable at the public expense,

unless Holiday Inn (in its absolute discretion) notifies the undertaker that it is desirous of retaining the temporary Holiday Inn access in which case the undertaker must grant Holiday Inn all such rights as are reasonably necessary for its use for the purposes of accessing and servicing the hotel and, to the extent necessary, Holiday Inn will thereafter be responsible for obtaining any planning permission required for the temporary Holiday Inn access to remain permanently in situ.

(5) Without prejudice to the approval by Holiday Inn of any detailed layout and design and the necessity of meeting the requirements of sub-paragraph 4 as a whole, it will be unreasonable for the purposes of sub-paragraph (4)(a) for Holiday Inn to withhold its approval of the principle of a permanent temporary Holiday Inn access which is materially in the same location as the existing Holiday Inn access.

(6) The undertaker must not stop up, close, alter, divert or restrict the use of any part of Povey Cross Road required for vehicular access to or from the hotel.

Boundary treatment and landscaping

6.—(1) The undertaker must not commence the authorised development on the Holiday Inn works area until it has submitted a detailed boundary treatment and landscaping strategy in respect of the Holiday Inn works area and the strategy has been approved by Holiday Inn (such approval not to be unreasonably withheld or delayed); and the undertaker must comply with the approved strategy.

(2) The strategy must include—

- (a) the location, number, species, size and planting density of any proposed planting (including an arboricultural report);
- (b) the cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;

- (d) hard surfacing materials;
- (e) proposed lighting (including whether existing exterior boundary lighting is to be retained, replaced or moved);
- (f) proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;
- (g) details of existing trees to be retained, with measures for their protection during the carrying out of the authorised development; and
- (h) any trees proposed to be lost on the A217 and Povey Cross Road frontages;
- (i) a programme and implementation timetable for all boundary treatment and landscaping works.

Notice of stopping up, closures and works etc.

7.—(1) The undertaker must not commence the Longbridge Roundabout Junction improvements or any part of the authorised development within the Holiday Inn works area until it has proposed and agreed a date for such commencement with Holiday Inn (such agreement not to be unreasonably withheld or delayed and it will not be reasonable for Holiday Inn to require a commencement date later than 20 working days after one proposed by the undertaker but the undertaker may not propose a commencement date which would occur earlier than 60 working days after that commencement date is first proposed for agreement); and—

- (a) if the undertaker does not commence the Longbridge Roundabout Junction improvements or any part of the authorised development within the Holiday Inn works area on the agreed commencement date then it must propose and agree a new date for such commencement with Holiday Inn on the terms of this paragraph; and
- (b) the undertaker may not commence the Longbridge Roundabout Junction improvements or any part of the authorised development within the Holiday Inn works area prior to the latest agreed commencement date.

(2) The undertaker must not stop up the existing Holiday Inn access or close, alter, divert or restrict the use of any part of the A217 or A23 required for vehicular access to or from the hotel until it has proposed and agreed a date for such stopping up, closure, alteration, diversion or restriction (such agreement not to be unreasonably withheld or delayed and it will not be reasonable for Holiday Inn to require such a date later than 20 working days after one proposed by the undertaker but the undertaker may not propose a date which would occur earlier than 60 working days after that date is first proposed for agreement); and—

- (a) if the undertaker does not implement the stopping up, closure, alteration, diversion or restriction on the agreed date then it must propose and agree a new date with Holiday Inn on the terms of this paragraph; and
- (b) the undertaker may not implement such stopping up, closure, alteration, diversion or restriction prior to the latest agreed date.

Construction hours

8.—(1) No part of the authorised development may be carried out on, or within 100 metres of, the Holiday Inn land nor may any other powers pursuant to this Order be exercised in these locations—

- (a) other than between the hours of—
 - (i) 07:00 and 19:00 on Mondays to Fridays;
 - (ii) 07:00 and 13:00 on Saturdays;
- (b) on Sundays and public holidays.

(2) Sub-paragraph (1) does not apply in relation to:

- (a) the carrying out of any part of the authorised development authorised under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974 which may be carried out between 07:00 and 22:00 on Mondays to Fridays;

- (b) non-intrusive surveys;
- (c) night-time closures for bridge demolition and installation works;
- (d) oversize deliveries or deliveries where daytime working would be disruptive to normal traffic operation;
- (e) junction tie-in works;
- (f) removal of overhead power lines;
- (g) overnight traffic management measures;
- (h) cases of emergency; and
- (i) activities otherwise agreed by the undertaker with Holiday Inn in advance (such agreement not to be unreasonably withheld or delayed),

provided that in respect of paragraphs (a) - (e) the undertaker has provided Holiday Inn with no less than 10 working days written notice and in respect of paragraph (g) the undertaker's request has been made in writing no less than 10 working days in advance.

Signage

9.—(1) The undertaker must not stop up the existing Holiday Inn access or close, alter, divert or restrict the use of any part of the A217 or A23 required for vehicular access to or from the hotel or commence the Longbridge Roundabout Junction improvements or any part of the authorised development within the Holiday Inn works area until it has submitted written details of a proposed temporary and permanent signage strategy for the periods during and after such stopping up, closure, alteration, diversion or restriction and during and after the carrying out of such part of the authorised development in accordance with sub-paragraph (2) and the strategy has been approved by Holiday Inn (such approval not to be unreasonably withheld or delayed); and the undertaker must comply with the approved strategy.

(2) The signage strategy must include—

- (a) details of specific temporary and permanent directional and main signage on the A217, Povey Cross Road and any other highway during and after any stopping up, closure, alteration, diversion or restriction affecting access to and from the hotel directing hotel staff and guests and those providing services and making deliveries to the hotel (in each case by foot or in vehicles) to and from the entrance to the hotel and, where appropriate, separate directional and main signage for construction traffic associated with the carrying out of the authorised development;
- (b) details of specific temporary and permanent signage on the Holiday Inn land during and after the carrying out of the authorised development directing hotel staff and guests and those providing services and making deliveries to the hotel (in each case by foot or in vehicles) to and from the entrance to the hotel and, where appropriate, separate directional and main signage for construction traffic associated with the carrying out of the authorised development on the Holiday Inn works area;
- (c) replacement temporary and permanent corporate Holiday Inn signs as reasonably necessitated by the authorised development; and
- (d) provision for the modification from time to time of any such temporary signage to reflect the phasing of any stopping up, closure, alteration, diversion or restriction or carrying out of the authorised development affecting access to and from the hotel,

and such details must include the design, size, location of each sign.

Construction liaison

10.—(1) The undertaker must procure that a dedicated construction liaison officer and deputy within each of the undertaker and any contractor engaged by it in the carrying out of the authorised development during the exercise of any powers of this Order which affect the Holiday Inn land or the operation of the hotel—

- (a) provide Holiday Inn with their telephone and email contact details, to be updated as required from time to time;
- (b) respond as soon as reasonably practicable to telephone calls and emails from Holiday Inn between 07:00 and 18:00 hours Mondays to Sundays (and at any time in case of emergencies) in respect of the exercise by the undertaker of any powers pursuant to this Order which affect the Holiday Inn land or the operation of the hotel;
- (c) arrange and hold meetings in the first week of every month with Holiday Inn in respect of the exercise by the undertaker of any powers pursuant to this Order which affect the Holiday Inn land or the operation of the hotel for the duration of such exercise; and the officer must issue minutes of each meeting to Holiday Inn no later than 5 working days after each meeting;
- (d) resolve on behalf of the undertaker reasonable concerns raised by Holiday Inn promptly in respect of the exercise by the undertaker of any powers pursuant to this Order which affect the Holiday Inn land or the operation of the hotel,

and the undertaker must not commence the Longbridge Roundabout Junction improvements or any part of the authorised development within the Holiday Inn works area until it has provided Holiday Inn in writing with the contact details of the officers and deputies.

(2) If Holiday Inn does not consider that the undertaker (or dedicated construction liaison officer on its behalf) has resolved its reasonable concerns in respect of the exercise by the undertaker of any powers pursuant to this Order which affect the Holiday Inn land or the operation of the hotel pursuant to this paragraph 10 it may require the matter to be settled in accordance with article 54 (arbitration).

Construction method, management and phasing etc.

11.—(1) The undertaker must not commence the authorised development on the Holiday Inn works area until it has submitted a detailed construction method, management and phasing scheme in respect of that part of the authorised development and the scheme has been approved by Holiday Inn (such approval not to be unreasonably withheld or delayed); and the undertaker must comply with the approved scheme.

(2) The construction method, management and phasing scheme must include details in respect of—

- (a) a construction phasing programme and plans specific to authorised development on the Holiday Inn works area;
- (b) the duration and extent of the undertaker’s presence on the Holiday Inn works area;
- (c) detailed plans showing the extent of any part of the Holiday Inn works area to be used at any time for the purposes of the authorised development including working areas;
- (d) the storage of plant and materials;
- (e) the location and height of any cranes, tunnel boring machines and scaffolding;
- (f) the location and size of any compounds and welfare facilities;
- (g) the management and mitigation of dust emissions and odour;
- (h) the disposal of waste and other materials arising from the construction programme;
- (i) security measures during the carrying out of the authorised development including fencing and hoardings, CCTV (including the location of cameras), security lighting and a physical security presence where appropriate;
- (j) the lighting of works;
- (k) road cleaning and wheel washing facilities;
- (l) impacts on the hotel’s services and utilities (including surface water and foul drainage) throughout the carrying out of the authorised development (including interruption and disruption periods and emergency procedures) and thereafter, with appropriate management and mitigation measures so that no material disruption or inconvenience will be caused to the provision of existing services and utilities to the hotel;
- (m) emergency protocols;

- (n) so far as necessitated by the carrying out of the authorised development, the temporary relocation or re-provision of equipment (including cameras and number plate recognition technology) used by any car park management services company on the Holiday Inn land (which may be carried out by or on behalf of Holiday Inn by the relevant car park management services company and the undertaker must reimburse the reasonable costs of such re-relocation or re-provision no later than 30 working days after Holiday Inn has made a written request for such costs to be reimbursed; and such a request must include reasonable written details of the costs actually incurred); and
 - (o) any other matters relevant to Holiday Inn land and to the operation of the hotel.
- (3) The undertaker must not burn waste on the Holiday Inn works area or on land to which the Longbridge Roundabout Junction improvements relate at any time.

Health and safety

12. The undertaker must make the health and safety file maintained in respect of the authorised development on the Holiday Inn works area pursuant to The Construction (Design and Management) Regulations 2007 available for inspection by Holiday Inn at reasonable prior written notice.

Surveys and investigations

13.—(1) The undertaker must not carry out any surveys or investigations (including environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions which may, where necessary, include taking samples for testing and undertaking intrusive works) on the Holiday Inn land, or enter upon any part of it for such purposes, until it has submitted details of the proposed surveys or investigations and measures proposed to mitigate any resulting adverse impacts on the Holiday Inn land or its operation and the details have been approved by Holiday Inn (such approval not to be unreasonably withheld or delayed); and—

- (a) such details must (unless otherwise agreed in writing between Holiday Inn and the undertaker) accord with the principles of the provisions in this Part of this Schedule where relevant for the purposes of the surveys or investigations in question; and
 - (b) the undertaker must comply with the approved details.
- (2) The undertaker must—
- (a) give no less than 10 working days' prior written notice to Holiday Inn before carrying out any surveys or investigations approved under sub-paragraph (1);
 - (b) minimise disturbance to and not interfere with the operation of the hotel or access to it;
 - (c) reinstate any land which is the subject of any surveys or investigations approved under sub-paragraph (1) to Holiday Inn's reasonable satisfaction.

Expenses

14.—(1) The undertaker must pay Holiday Inn the reasonable expenses reasonably incurred by it (including by its solicitors, surveyors or other relevant consultants) for, or in connection with, the carrying out of the authorised development and any action required of Holiday Inn in this Part of this Schedule including—

- (a) considering and giving any agreement or approval pursuant to this Part of this Schedule or otherwise required by the undertaker;
- (b) attending meetings with the undertaker during the carrying out of the authorised development,

and it shall be reasonable for Holiday Inn to withhold its agreement or approval pursuant to the relevant provision of this Part of this Schedule if the undertaker does not in advance pay such expenses or provide a solicitor's undertaking (from a firm of reasonably sufficient covenant strength) in respect of them.

(2) Holiday Inn must use its reasonable endeavours to mitigate in whole or in part and in any event to minimise any expenses capable of being claimed under sub-paragraph (1) and Holiday Inn must if requested by the undertaker in writing provide the undertaker with—

(a) a breakdown of the expenses Holiday Inn expects to incur pursuant to an activity which could give rise to a claim for expenses under this Part of this Schedule provided that reasonably sufficient information has been given to provide the breakdown; and

(b) a breakdown of any expenses actually incurred,
within 20 working days of the date of the request.

Indemnity

15.—(1) The undertaker indemnifies Holiday Inn from and against all reasonable costs, claims, expenses, damages, losses (including demonstrable and reasonable business losses including those occasioned by increased noise on the southern elevation of the hotel after completion and use of the authorised development) and liabilities reasonably incurred or suffered by Holiday Inn arising from any breach by the undertaker of a term of this Part of this Schedule or the exercise by the undertaker of any powers of this Order within 10 working days of demand save for any loss arising out of or in consequence of any negligent act or default of Holiday Inn; and the fact that any act or thing may have been done by the undertaker in accordance with plans or particulars submitted to or modifications or conditions specified by Holiday Inn, or in a manner approved by Holiday Inn, or under its supervision or the supervision of its duly authorised representative, does not excuse the undertaker from liability under the provisions of this paragraph.

Reasonableness

16. The undertaker and Holiday Inn must act reasonably in respect of any given term of this Part of this Schedule and, in particular, (without prejudice to generality) where any consent, approval or expression of satisfaction is required by this Part of this Schedule it must not be unreasonably withheld or delayed.

Disputes or differences

17. Any dispute or difference arising between the undertaker and Holiday Inn under this Part of this Schedule must be referred to and settled by arbitration under article 54 (arbitration).