Gatwick Airport Northern Runway Project

Response to the ExA's Proposed Schedule of Changes to the Draft DCO

Book 10

VERSION: 1.0

DATE: AUGUST 2024

Application Document Ref: 10.72

PINS Reference Number: TR020005

APFP Regulations 5(2)(a) **Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009**

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1 Introduction

1.1.1 In this document the Applicant provides its response to the ExA's **Proposed Schedule of Changes to the Draft DCO** [PD-028].

2 Response

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
ARTICLES				
Article 2 (Interpretation)		"the tree removal schedules" means the tree removal schedules contained within the tree survey report and arboricultural impact assessment certified as such by the Secretary of State under article 52 (certification of documents).	A new definition in sub-paragraph (1). Refer to the recommended amendment to Article 25.	The Applicant has addressed this in its response to the recommended amendment to Article 25 below.
Article 9 (Planning permission)	(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	(4) ~~Any conditions~~ Conditions 3 and 4 of ~~any~~ planning permission CR/125/1979 ~~granted prior to the date of this Order that~~ which are incompatible with the requirements of this Order or the authorised development shall cease to have effect from	As there only appear to be two conditions of planning application CR/125/1979 which are consistent with the DCO application sub-paragraph (4) can be more specific than the Applicant's proposed drafting.	The Applicant has carefully considered the ExA's proposal and the recent submissions from the JLAs in relation to Article 9. The Applicant maintains that its proposed drafting is preferable for the reasons set out in response to DCO.2.6 in the Applicant's **Response to ExQ2**

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	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.	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~~.		[REP7-081] and the additional explanation provided as follows. The Applicant is concerned that specifying particular conditions in Article 9(4) could have the opposite effect to that intended and in fact introduce uncertainty as to the effect of the DCO on other existing planning conditions that are *not* specified. By default, the grant of a DCO authorises the construction, operation and use of the authorised development (see Article 3(1) of the Applicant's draft DCO), notwithstanding any pre-existing planning constraints. The Applicant's Article 9(4) supplements that by expressly confirming that pre-existing planning conditions are disapplied <u>insofar as they are incompatible with the requirements of the DCO or the authorised development</u>. This is particularly necessary for the Project, which is the reconfiguration of an existing airport with a substantial planning history, as compared to e.g. development on a greenfield site. The Applicant's drafting supports
Article 9 (Planning permission)	(5) Where the undertaker identifies an incompatibility between a condition of a planning permission and this Order that engages paragraph (4), it must notify the relevant planning authority and use reasonable endeavours to notify the current beneficiary of the affected planning permission as soon as reasonably practicable.	~~(5) Where the undertaker identifies an incompatibility between a condition of a planning permission and this Order that engages paragraph (4), it must notify the relevant planning authority and use reasonable endeavours to notify the current beneficiary of the affected planning permission as soon as reasonably practicable.~~	With the proposed change to subparagraph (4), sub-paragraph (5) would not be necessary as it provides a notification point arising from (4). Subsequent subparagraphs should be renumbered.	

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				the purpose of the grant of the DCO in ensuring that the authorised development can be built out and operated without hindrance and makes that express. If only certain conditions are specified as being disapplied in Article 9(4), the question arises as to what effect the DCO has on other conditions that may transpire to be incompatible with the authorised development but which were not specified. The Applicant's view is that the authorised development could still be constructed and operated pursuant to the general authorisation in Article 3, but there would be unnecessary uncertainty. The Applicant's drafting removes that uncertainty. To re-emphasise, such 'incompatibility' would necessarily only occur where specific alternative provision on the same matter had been included in the draft DCO (so causing the inconsistency). The existence of a historic planning permission by itself doesn't lead to an incompatibility and so trigger

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				Article 9(4) – it is only where there is a condition under such permission which due to its wording has an incompatibility with the draft DCO and/or the authorised development. In those circumstances, it must surely follow that it is preferable for the DCO's terms to unambiguously have primacy in respect of that incompatibility, but for the rest of the terms of that historic planning permission to otherwise continue. In such circumstance there would be no 'gap' in terms of controls or mitigation. The Applicant notes that the JLAs have conducted an exercise to identify planning conditions that would concern them if disapplied. The Applicant has reviewed the JLAs' list in [REP8-163] and notes their central conclusion that their listed conditions *"are **not incompatible** under paragraph (4) and so, for the avoidance of doubt, should be preserved"* (emphasis added). Therein lies the point – if the conditions are not incompatible with the authorised development

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				or the requirements of the Order, they will not be disapplied by Article 9(4). Hence, there is no need to list them as *not being disapplied* or inversely to include a list of conditions *to be disapplied*. To do so introduces unnecessary complexity and potentially undermines the intention of either form of drafting. The Applicant's drafting is clear in its application, contains the procedural safeguard of the notification requirement in paragraph (5) and would not result in any 'gap' in mitigation or controls because of the substantial mitigation package that is secured as part of the authorised development. Again by way of re-emphasis, Article 9(4) is materially the same in effect as Article 56(3) in the draft Lower Thames Crossing DCO, which provides that to the extent that compliance with any conditions of a planning permission is inconsistent with the exercise of any power, right or obligation under the Order, no enforcement action may be taken under the 1990 Act in relation to

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				compliance with those conditions. The Applicant's drafting here is therefore precedented in that emerging drafting. If the Secretary of State were minded to adopt the ExA's proposed wording or the JLAs' alternative wording, the Applicant would respectfully request the opportunity to comment further.
Article 9 (Planning permission)	(7) The undertaker must not exercise the permitted development right in Class F of Part 2 of Schedule 2 to the 2015 Regulations for— (a) any development on the areas labelled Work No. 38 (habitat enhancement area and flood compensation area at Museum Field) or Work No. 43 (water treatment works) on the works plans; or (b) any development of car parking on the area labelled Work No. 41 (ecological area at	(7) The undertaker must not exercise the permitted development right in Class F of Part ~~8~~2 of Schedule 2 to the 2015 Regulations for— ~~(a)~~ any development on the areas labelled Work No. 38 (habitat enhancement area and flood compensation area at Museum Field) or Work No. 43 (water treatment works) on the works plans~~; or~~ ~~(b) any development of car parking on the area labelled Work No. 41 (ecological area at Pentagon Field) on the works plans~~.	In the event that new Requirement R1 is recommended to be retained (b) would be redundant as all permitted development rights to provide parking would be recommended to be removed. Part 8 is the relevant part of the GPDO.	Please see the Applicant's responses to the proposed amendments to Requirement 37 and the new Requirement R1 below. The Applicant agrees with the proposed removal of paragraph (7)(b) on the basis that provision of car parking additional to that provided for within the authorised development would be controlled by the Applicant's amended Requirement 37 (car parking spaces), which incorporates drafting from the ExA's proposed Requirement R1. The Applicant has corrected the reference to the GPDO.

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	Pentagon Field) on the works plans.			
Article 10 (Application of the 1991 Act)	(7) Subject to paragraph (3), the permit schemes and the lane rental schemes apply to the construction and maintenance of the authorised development and will be used by the undertaker in connection with the exercise of any powers conferred by this Part.	(7) Subject to paragraph (3), the permit schemes and the lane rental schemes apply to the construction and maintenance of the authorised development and ~~will~~ must be used by the undertaker in connection with the exercise of any powers conferred by this Part.	As proposed by the Legal Partnership Authorities 'must' provides greater certainty than 'will'.	The Applicant is content to adopt this drafting.
Article 11 (Street works)	(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the Order limits and may—	(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—	To ensure that the street works powers are subject to consent of the street authority thereby allowing an overview of works within the vicinity of the Proposed Development.	The Applicant maintains its position as detailed in response to DCO.2.8 in its **Responses to ExQ2** [REP7-081] and in row 7 of **Appendix A** to its **Response to Deadline 7 Submissions** [REP8-115]. The Applicant reiterates that its proposed drafting in Article 11 is well-precedented in made transport DCOs – see e.g. Article 13 of the A1 in Northumberland: Morpeth to Ellingham Development Consent Order 2024, Article 11 of the M3 Junction 9 Development Consent

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				Order 2024 and Article 11 of the A38 Derby Junctions Development Consent Order 2023. The Applicant's proposed drafting also accords with the drafting included in the final draft DCO submitted by the applicant for the London Luton Airport DCO, as emerging airport precedent. Government guidance *Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects* (April 2024) (the "**DCO Guidance**") specifies that, where provisions are well established, drafting should follow the Government Department's preferred drafting unless there are particular circumstances arising in the particular Project (paragraph 19). The JLAs have not to date identified any particular streets for which they would be concerned with the application of Article 11, nor given a reason why this Project warrants departure from well-precedented drafting. Therefore, the

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				Applicant's drafting should be retained. The Applicant does not consider that the type of works envisaged by Article 11 (i.e. works in the street to alter utilities) should require the prior consent of the street authority. Requiring this whenever the undertaker needs to alter utilities (in addition to the processes required by the protective provisions for the benefit of those utility undertakers in Schedule 9 of the draft DCO) would be unduly onerous and unnecessarily delay the construction timetable. This runs contrary to Government policy to remove hurdles to delivery of nationally significant infrastructure, as set out in Chapter 25 (DCO, s106 and Control Docs) of the Applicant's **Closing Submissions** (Doc Ref. 10.73).
Article 12 (Power to alter layout, etc., of streets)	(1) (a) alter the level or increase the width of any kerb, street, footpath, footway, cycle track, carriageway or verge or central reservation;	1) (a) alter the level or increase the width of any ~~kerb,~~ street, footpath, footway, cycle track, carriageway or verge or central reservation;	A kerb is a building block of the other items mentioned. Other building blocks such as a paving stone are not mentioned. The word kerb is thus	The Applicant is content to make this deletion.

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	(1) (c) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track, verge or central reservation within the street;	1) (c) increase the width of the carriageway of the street by reducing the width of any ~~kerb,~~ footpath, footway, cycle track, verge or central reservation within the street;	unnecessary and redundant in this context.	
Article 25 (Felling or lopping of trees and removal of hedgerows)	(5) In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997.	(5) In this article "hedgerow" means a hedgerow within the meaning of the Hedgerow Regulations 1997 and which are listed in the tree removal schedules.	In conjunction with the new definition in Article 2, this would provide greater certainty over which hedgerows are to be affected.	Whilst the Applicant continues to consider that the existing provisions of Article 25 in conjunction with the other protections in the draft DCO (primarily Requirement 28 (arboricultural and vegetation method statement)) mean that no additional constraint is necessary, the Applicant is content to revise Article 25 to address the JLAs' stated concern and the ExA's recommendation. The Applicant has therefore incorporated new drafting into Article 25 that materially adopts the ExA's proposal. The differences from the ExA's exact form of drafting are as follows: (i) the meaning of a hedgerow has been amended to refer to the regulation within the Hedgerow Regulations 1997 which

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				determines the hedgerows to which those regulations apply, for specificity; (ii) the application documents referred to as showing hedgerows to be potentially removed have been listed after a close review by the Applicant; and (iii) provision has been made for other hedgerows to be removed if this transpires to be necessary, but only with prior approval by the relevant planning authority. The Applicant has also included a deeming provision at paragraph (6) in respect of other hedgerows for which the Applicant applies for approval to remove, in the same manner as deeming provisions are used throughout the draft DCO where there is provision for relevant authority consent, approval or agreement.
Article 40 (Special category land)		(6) Provision must be made (whether in the relevant landscape and ecology management plan, the open space delivery plan submitted	New sub-paragraph (6) inserted and previous (6) renumbered as (7). Change required to ensure that the future maintenance of the	The Applicant is content to provide this commitment and has adopted this new drafting in materially the form proposed by the ExA.

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		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).	replacement open space is assured indefinitely by the Undertaker.	The only changes that have been made are: (i) to specify that provision for ongoing maintenance would be made in the relevant landscape and ecology management plan ("**LEMP**") (or by some other method), rather than also refer specifically to the open space delivery plan, as that plan is envisaged to contain details regarding timing rather than specific management arrangements, which are properly for the subsequent LEMP, and (ii) to clarify that a change to the maintenance arrangement included in the initial LEMP for Work No. 40(c) can be subsequently agreed by the discharging authority under requirement 8(4) in the normal manner (this agreement being subject to the restriction imposed by paragraph 1(4) of Schedule 2 that such agreement could not give rise to materially new or materially different environmental effects).

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Article 49 (Defence to proceedings in respect of statutory nuisance)	(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, maintenance or operation of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with—	(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) and (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 development in accordance with— (i) a notice served under section 60 (control of noise on construction sites) of the	The proposed changes provide exemptions from the provisions in respect of the construction and maintenance of the authorised development with compliance based on the Code of Construction Practice.	The Applicant has revisited Article 49 in light of the ExA's recommendations with a view to ensuring that the article is appropriately targeted and closely aligned to precedent DCOs accepted by the Secretary of State. The Applicant is content to accept the deletion of paragraphs (c) and (h) from the article. Without prejudice to its primary position that nuisance proceedings in respect of paragraphs not included in Article 49 would nonetheless benefit from the general statutory authority / defence in section 158 of the Planning Act 2008 (the "**2008 Act**"), paragraph (c) does not in any event apply to premises other than private dwellings (see section 79(4) of the Environmental Protection Act 1990 ("**EPA**")) and would therefore be of limited (if any) relevance to the authorised development. The Applicant's preference would be for the general sweeper provision in paragraph (h) to remain, but it is

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	(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.	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~~,~~ or maintenance ~~or operation~~ of the authorised development and that it cannot reasonably be avoided.		content to adopt the ExA's recommendation to remove it. As regards the references to "operation", the Applicant has accepted the recommended deletions in paragraphs (1)(a) and (b) as part of aligning the drafting more closely to well-established precedent. As part of this, the provision in paragraph (2) whereby compliance with the Code of Construction Practice shows that a nuisance could not reasonably have been avoided has been limited in effect to only construction or maintenance of the authorised development. The Applicant does need, however, to ensure that use of the authorised development benefits from the protections of Article 49 so that it is not prevented from using the authorised development if a DCO were granted by virtue of an order of a magistrates' court pursuant to section 82 EPA that relates to nuisance that cannot reasonably be avoided in using the authorised development. This is again without prejudice to the Applicant's primary position that

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				the general defence in section 158 of the 2008 Act would have overarching effect in such circumstances. The Applicant has therefore added new paragraph (1)(c) which incorporates wording that is long-precedented (see Article 7(1)(b)(ii) of the Model Articles) and included as standard in made transport DCOs – e.g. Article 44(1)(a)(iii) of the M3 Junction 9 Development Consent Order 2024, Article 47(1)(b) of the A66 Northern Trans-Pennine Development Consent Order 2024, Article 43(1)(b) of the A38 Derby Junctions Development Consent Order 2023 and Article 38(1)(b) of the Manston Airport Development Consent Order 2022. The Applicant refers to the DCO Guidance referenced above in the row for Article 11 and emphasises that there are no particular circumstances specific to this Project that warrant a departure from well-established drafting here.

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Article 56 (Deemed consent)	(5) Where an application for consent or approval to which this article applies is made, the fee contained in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as may be amended or replaced from time to time) is to apply and must be paid to the recipient authority for each application.	~~(5) Where an application for consent or approval to which this article applies is made, the fee contained in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as may be amended or replaced from time to time) is to apply and must be paid to the recipient authority for each application.~~	The costs associated with approving consents under articles and discharging requirements should be met on a cost recovery basis through a planning performance agreement. See New Requirement 3 below.	These deletions are accepted. Please see the Applicant's response to new Requirement 3 below on the wider point around JLA fees.
Article 56 (Deemed consent)	(6) Any fee paid under paragraph (5) must be refunded to the undertaker within a period of 35 days of the application being rejected as invalidly made.	~~(6) Any fee paid under paragraph (5) must be refunded to the undertaker within a period of 35 days of the application being rejected as invalidly made.~~	As the discharging authority will incur costs associated with reaching a decision that an application is invalid it is not unreasonable that the Undertaker is responsible for meeting those costs.	
SCHEDULES				
Schedule 1				
Work No. 41	Works to create an ecological area at	Works ~~to create an ecological area~~ at Pentagon Field including works to—	To provide greater clarity about the scale and location of the land raising.	The Applicant has revised the wording of Work No. 41 taking account of the ExA's

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	Pentagon Field including works to— (a) deliver no less than 1 ha of planting; (b) plant a tree belt no less than 250 metres in length and 15 metres in width along the site's eastern boundary (adjacent to Balcombe Road); (c) place and grade spoil deposition.	(a) establish a temporary spoil receptor site; (b) permanently raise the around 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; (ii) planting of a native tree belt approximately 15 metres wide and no less than 250 metres in length along the eastern boundary of Pentagon Field adjacent to Balcombe Road; (iii) planting of no less than 1 hectare of native woodland in the south east portion of the site. ~~(a) deliver no less than 1 ha of planting;~~ ~~(b) plant a tree belt no less than 250 metres in length and 15 metres in width along the site's eastern boundary (adjacent to Balcombe Road);~~		recommended wording. Where the Applicant's wording differs from the ExA's recommended wording, this is to ensure that it accurately reflects the Application proposals in that: (i) The ExA's wording referred to no less than 1 hectare of native woodland however the Applicant's commitment to deliver no less than 1 hectare relates to new planting within the site and includes the delivery / reinstatement of grassland. The woodland planting in the south of the site is outside of this. (ii) In part (b), the Applicant has also specified the maximum gradient of the side slopes of the permanent landform to align with the ES assessment (notably in **ES Chapter 8: Landscape, Townscape and Visual Resources** [APP-033]). (iii) The Applicant also considers that the reference to 'reprofiling' under the ExA's suggested wording for part (c)(i) is captured by the permanent ground works under part (b).

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		~~(c) place and grade spoil deposition.~~		The Applicant does wish to highlight that the more detailed description of these elements of the works at Pentagon Field was already captured by the **Design Principles** (Doc Ref. 7.3) (notably Design Principle DLP19) secured under DCO Requirements 4, 5, 6 and 10.
Work No. 44	Works to— (a) remove existing surface car parking and associated structures; (b) construct wastewater treatment works.	Works to— (a) remove existing surface car parking and associated structures; (b) construct wastewater treatment works; <u>(c) construct new rising mains and pumping station next to Gatwick Airport Police Station;</u> <u>(d) provide a new outfall to River Mole;</u> <u>(e) provide associated revisions to wastewater infrastructure within the project boundary.</u>	To provide greater detail about the extent of the proposed works and consistency with other descriptions of pumping station works.	The Applicant resists the inclusion of this additional wording in the work description for Work No. 44 because the development described does not fall within the main work area for Work No. 44 and is to be delivered as ancillary or related development under the latter part of Schedule 1 (authorised development). In particular, the Applicant considers *"associated revisions to wastewater infrastructure within the project boundary"* to be far too broad for inclusion in a specific work number and maintains that this is appropriately to be delivered as ancillary or related development. If this limb were to be added to Work No. 44, the Applicant is

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				unclear how it could reasonably adjust the area for Work No. 44 on the Works Plans as it would potentially have to expand this significantly to cover disparate areas within the Order limits. The work area on the Works Plans must cover all elements within the work description because this area serves as the outer bound for construction of that work under Article 6(1) (limits of works).
Work No. 45		Work to construct a pumping station east of the railway [X] if Work No. 44 is not constructed.	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 has been deleted from the latest version of the plan [REP6-015], The Legal Partnership Authorities understand that the pumping station is still required in case Work No. 44 is not delivered.	At Deadline 8, the Applicant submitted a revised version of ES Figure 5.2.1e in **ES Project Description Figures** (Version 5) [REP8-013] to reinsert the pumping station east of the railway and the associated pipeline, with an additional label that these works would be delivered as an either / or scenario depending on the On-airport WWTW's delivery (Work No. 44). This change was made in response to the West Sussex Joint Local Authorities' Deadline 7 submission [REP7-120] and explained in Section 9.4 of **The Applicant's Response to**

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				Deadline 7 Submission [REP8-115]. Notwithstanding this, and as explained above in response to Work No. 44, the provision of the pumping station and its associated pipeline is to be delivered as ancillary or related development under the latter part of Schedule 1 (authorised development). As such, the Applicant resists the inclusion of this additional Work No.
Ancillary or Related Development	(g) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;	(g) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any ~~kerb,~~ footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such ~~kerb,~~ footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;	A kerb is a building block of the other items mentioned. Other building blocks such as a paving stone are not mentioned. The word kerb is thus unnecessary and redundant in this context.	The Applicant is content to make this deletion.

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Schedule 2				
1 (Interpretation)	New	- "Annual Monitoring Report" shall mean the report as defined in the surface access commitments; - "average summer night" shall mean the period 2300-0700 in average operating mode between 16 June until 15 September inclusive; - "Eligible premises" shall mean buildings used as a permanent residence, school, hospital, library, place of worship, or community facility where, following the commencement of dual runway operations, and the undertaker having taken all reasonable operational and design measures on airport to reduce noise, air noise, ground noise or combined air and ground noise is predicted to exceed LAeq, 16 hr 54 dB on an average summer day, and buildings used as a permanent residence where, following the commencement of dual runway	Terms used in new requirements. 'Eligible premises' is intended to identify those premises where receptor-based mitigation **may** be necessary to achieve an internal environment, consistent with relevant standards/ guidance having accounted for other noise controls, including noise bunds used to mitigate sources of ground noise.	Please see the Applicant's response to the ExA's recommended amendments to Requirements 15 – 18 in Annex A to this document (below).

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		operations, air noise, ground noise or combined air and ground noise is predicted to exceed LAeq, 8 hr 48 dB, on an average summer night;		
R2A (Phasing scheme)	(1) The authorised development must not commence unless, no less than two months prior to the anticipated date of commencement, a phasing scheme setting out the anticipated phases for construction of the authorised development has been submitted to the host authorities and National Highways.	(1) The authorised development must not commence unless, no less than ~~two~~ four months prior to the anticipated date of commencement, a phasing scheme setting out the anticipated phases for construction of the authorised development has been submitted to the host authorities and National Highways.	A four month notice period would provide a reasonable amount of time for the host authorities to organise necessary resources without causing any significant delay to the project.	Whilst the Applicant continues to believe that a two-month period is reasonable, it is content to adopt this amendment.
R2A (Phasing scheme)		(3) 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 in writing by the host authority in question. (4) Where any requirement in this Schedule requires the	New sub-paragraphs (3) and (4) inserted and previous (3) renumbered as (5). The additional provisions would ensure that the host authorities would be able to organise necessary resources appropriately without causing any significant delay to the project.	The Applicant appreciates the ExA's concern behind this proposed drafting. To the extent the new drafting aims to ensure that the host authorities have an indication of when details and documents will come forward for approval such that they can adequately deploy their resources, the rest of Requirement 2 already achieves that through the submission and updating of the phasing scheme

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
		submission to any of the host authorities of details or a document relating to the authorised development, the undertaker must provide in writing 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 in writing by the host authority in question.		at the times directed in paragraph (2). The phasing scheme document will set out the anticipated temporal phasing for the Project works in the manner described in paragraph (4), which will inform when discharge applications under the requirements can be expected. Going beyond this and requiring timings for the submission of each document and detail required to be approved under the requirements, and at least three months before the time of submission, is unduly onerous and will almost certainlty introduce delays to adhere to that timescale which would frustrate the delivery of the Project. The Applicant is also agreeing to the provision of a PPA for the host authorities through the s106 Agreement, including provision of a planning officer for CBC, which will ensure that they are adequately resourced and prepared to deal with Project-related requirement discharges. The Applicant considers that this, together with the current drafting of Requirement 2, sufficiently

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				protects the host authorities' position. The Applicant also considers that the proposed new drafting could have unintended consequences, including introducing unnecessary (and potentially significant) delay into the construction period. New paragraph (3) requires a phasing scheme that has been updated as a result of a significant change to the contents or timing of the phases of construction to be submitted at least three months before that change is "implemented". It may not be possible in all circumstances for the Applicant to provide three months' notice of the outcome of a change to the Project's timing/phasing. For example, if an external event meant that a specific work had to be brought forward and carried out before another (differently to the order in the most recently submitted phasing scheme), it would delay the Project to have to wait three months before being able to carry out the necessary

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
				prior work that was brought forward. Equally, if the significant change was to push back aspects of the Project – again, perhaps in response to a significant external event – it is not clear whether the Applicant would be in breach of new paragraph (3) were it to delay a phase that was otherwise scheduled to commence within the subsequent three months. The change (i.e. the delay) could be said to be "implemented" less than three months from the decision being taken. For new paragraph (4), to the extent that it seeks to oblige the Applicant to give three months' advance notice before each submission pursuant to any requirement, this is not feasible. To do so would introduce repeated points of potential delay which, together, could significantly delay the construction period. If the Applicant urgently needed to discharge a particular document or detail to facilitate works that were otherwise ready to commence, it would have to wait

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
				three months before doing so in order that it could give the necessary notice under paragraph (4). The new drafting as a whole is therefore an unjustified additional administrative process that runs contrary to Government policy to *"hardwire a focus on delivery into every part of the system"* (*Getting Great Britain building again: Speeding up infrastructure delivery* (November 2023)).
R3 (Time limit and notifications)	(1) The authorised development must begin no later than the expiration of five years beginning on the start date. (2) The undertaker must notify the host authorities—: (a) within 7 days after the date on which the authorised development begins; (b) at least 28 days prior to the anticipated date of commencement of the authorised development, provided that commencement may still lawfully occur if notice is		The ExA notes that the Applicant's Explanatory Memorandum [REP8-007] does not provide justification for the time periods in Requirement 3. Additionally, the Legal Partnership Authorities [REP8-163] have not provided justification for the changes they propose to Requirement 3. Interested Parties are asked to comment on and justify the dates proposed.	The Applicant provided additional explanation for its proposed time periods in its **Response to Deadline 6 Submissions** [REP7-095] in the table following paragraph 8.2.1. The Applicant understands that the time periods in (a), (c) and (e) are agreed by the JLAs. In respect of the time periods in (b) and (d), the Applicant considers that 28 days' notice is adequate and does not understand what additional benefit the JLAs consider they will derive from a 42-day period. This notwithstanding, if the ExA concludes that a 42-day period is

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	not served in accordance with this sub- paragraph; (c) within 7 days after the actual date of commencement of the authorised development; (d) at least 28 days prior to the anticipated date of commencement of dual runway operations; and (e) within 7 days after the actual commencement of dual runway operations.			warranted, the Applicant is not opposed to the ExA including that in its recommended form of DCO.
R4 (Detailed design)	(4) No part of any listed works is to commence until details of the layout, siting, scale and external appearance of the buildings, structures and works within that part have been submitted to and approved in writing by— (a) for Work No. 40(a) (pedestrian footbridge over the River Mole), MVDC (in consultation with RBBC); and (b) for all other listed works, CBC.	(4) No part of any listed works is to commence until the details referred to in sub-paragraph (5) for ~~of~~ the layout, siting, scale and external appearance of the buildings, structures and works within that part have been submitted to and approved in writing by— (a) for Work No. 40(a) (pedestrian footbridge over the River Mole), MVDC (in consultation with RBBC); and (b) for all other listed works, CBC.	To ensure that the approval regime for listed works provides the type of information which a local planning authority would expect to be provided with.	The Applicant is content to add this additional drafting in materially the form proposed. In making this change, the Applicant wishes to highlight the following: The Applicant had already expected to provide much of the information listed in sub-paragraphs (d) to (j) as part of the compliance statement and / or as part of the information that the Applicant would consider necessary to be able to explain the design proposals to the relevant authorities in order to satisfy Requirement 4. As such,

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
	(5) The details referred to in sub- paragraph (4) must include an explanatory note and drawings (where necessary) and be accompanied by a compliance statement.	(5) The details referred to in sub- paragraph (4) must include= (a) an explanatory note; (b) ~~and~~ drawings (where necessary) ~~and be accompanied by~~ (c) a compliance statement; (d) details of layout, siting, scale, external appearance and levels (including existing and finished floor levels and ground levels); (e) a schedule of materials and finishes; (f) details of any associated structures: (g) access arrangements; (h) an operational lighting scheme for any works; (i) details of any construction and sustainability measures; and (j) where any works are subject to a design review in accordance with Annex A to Appendix A to the design and access statement—		the Applicant is content with the majority of the additional drafting to expressly set this out to provide additional clarity for the Applicant and the JLAs. The majority of elements listed under sub-paragraphs (d) to (i) are related to matters secured under the **Design Principles** (Doc Ref. 7.3). As such, details under sub-paragraphs (d) to (i) will also need to be covered in the compliance statement to explain the relationship to the relevant Design Principles (e.g. external appearance, material, operational lighting design, sustainability measures, etc). In future submissions under Requirement 4 and where there is overlap, the Applicant intends to point to the relevant parts of the compliance statement in order to satisfy parts (d) to (i) and avoid unnecessary duplication in materials submitted to the JLAs, thereby efficiently using their resources. The Applicant has amended the ExA's proposed wording in

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		(i) the design approach; (ii) how the design principles have been incorporated into the final design; and (iii) how the output of the design review process has been taken into account in the design presented for approval.		incorporating it into the draft DCO as follows: (i) Not all of the listed details may be relevant for each part of a listed work for which details are submitted to the authorities. The Applicant has therefore specified that the details submitted must include *"such of the following [list] as are reasonably considered necessary for the part of the listed work in question by CBC or MVDC…"* so that the discharging authority can specify details it does not reasonably require in a particular case; (ii) The Applicant has specified that the schedule in (e) is of external materials and finishes; (iii) The Applicant has omitted sub-paragraph (5)(j)(ii) from the ExA's recommended drafting because provision is already made in what is now numbered sub-paragraph (5)(c) for the compliance statement to be submitted and this document, as per paragraph (7) in the existing requirement, sets out how the part of the authorised development in question will be

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				constructed in accordance with the design principles. (iv) To avoid unnecessary and potentially confusing duplication, the Applicant has replaced the bespoke document described in sub-paragraph (j) of the ExA's drafting with the 'Design Review Statement' described in Annex A to the **Design Principles** (Doc Ref. 7.3), which is specified to set out: - details of the design review carried out; - the executive summary of the Design Adviser's Design Report; submitted to the Applicant; and - a response to the Design Adviser's recommendation and any areas for further consideration contained in the Design Report. This document will fulfil the role envisaged by the bespoke document described in sub-paragraph (j).
R10 (Surface and foul water drainage)	(4) No part of any listed works involving surface or foul water drainage is to	(4) No part of any listed works involving surface or foul water drainage is to commence until	To ensure that the approval regime for listed works provides the type of information which a	As above for Requirement 4 (detailed design), the Applicant had already expected to provide

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	commence until details of the surface and foul water drainage for that part, including means of pollution control and monitoring, have been submitted to and approved in writing by CBC (in consultation with West Sussex County Council, the Environment Agency and Thames Water Utilities Limited). (5) The drainage details referred to in sub-paragraph (4) must include an explanatory note and drawings (where necessary) and be accompanied by a compliance statement.	the details referred to in sub-paragraph (5) of the surface and foul water drainage for that part, including means of pollution control and monitoring, have been submitted to and approved in writing by CBC (in consultation with West Sussex County Council, the Environment Agency and Thames Water Utilities Limited). (5) The drainage details referred to in sub-paragraph (4) must include- (a) an explanatory note; (b) ~~and~~ drawings (where necessary)~~ and be accompanied by~~ (c) a compliance statement; (d) details of layout, siting, scale, external appearance and levels (including existing and finished floor levels and around levels); (e) a schedule of materials and finishes; (f) details of any associated structures:	local planning authority would expect to be provided with.	much of the listed information so is happy to adopt the proposed drafting in materially the form set out. However, the Applicant does not consider that the list of details should just be copied from Requirement 4 (detailed design) as not all of the items on the list are relevant to drainage details. The Applicant has therefore included the following: (a) an explanatory note; and (b) drawings; (where necessary) and be accompanied by a (c) a compliance statement;. (d) details of layout, siting, scale, external appearance and levels; (e) details of any associated structures; (f) details of any construction and sustainability measures; and (g) for part of a work that is subject to design review in accordance with annex A of appendix 1 of the design and access statement, the relevant "Design Review Statement" as described in that annex A.

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		(a) access arrangements; (h) an operational lighting scheme for any works; (i) details of any construction and sustainability measures; and (i) where any works are subject to a design review in accordance with Annex A to Appendix A to the design and access statement— (i) the design approach; (ii) how the design principles have been incorporated into the final design; and (iii) how the output of the design review process has been taken into account in the design presented for approval.		The Applicant reiterates points (i) and (iv) from its above response to Requirement 4 (detailed design) and has adopted the same approach here.
R15 (Air noise envelope) and R16 (Air noise envelope reviews)	Text to be replaced by wording in next column	**Air noise limits** (1) From the commencement of dual runway operations, the operation of the airport shall be planned to achieve a predicted air noise contour area that:	**Reason** For example, ANPS 5.60 "The benefits of future technological improvements should be shared between the applicant and its local communities, hence helping to achieve a balance	Please see the Applicant's response to this proposal at Annex A to this document (below).

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
		for an average summer day is at least 10% less than the value of the 51 dB air noise contour area calculated for an average summer day in 2019; and for an average summer night is at least 10% less than the value of the 45 dB air noise contour area calculated for an average summer night in 2019 (2) Five years after the commencement of dual runway operations, and every fifth year thereafter until 2049, the operation of the airport shall be planned to achieve a predicted air noise contour area that: for an average summer day reduces the 51 dB air noise contour area by at least a further 10% and for an average summer night reduces the 45 dB air noise contour area by at least a further 10% (3) Before the commencement of dual runway operations, and	between growth and noise reduction" and "include clear noise performance targets". **Informative** In its submissions at D8 the CAA referred to the ERCD report 2002 which considered that 62%/65% of the day/night fleet had transitioned by 2019 in relation to the reduction stated in the aviation key facts (APF 2013). The Applicant considered in its D8 submissions that the APF 7dB key fact reduction across the test points corresponds to 2.3 dB in terms of reduction in the affected communities. 10% has been taken as corresponding to 0.5 dB using the CAA 'rule of thumb' 20% per 1 dB recognising that expressing the noise limit as an area above a noise level for the day and night metrics provides greater operational flexibility. In the longer term, post commencement of dual runway operations the ExA has had regard for scenario 3 of ICAO's	

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		annually thereafter, the undertaker shall have submitted to the independent air noise reviewer and have had approved by the independent air noise reviewer an operating plan ahead of the following summer operating season that shows that the noise limits set out in (1) and (2) shall be achieved. (4) As soon as reasonably practicable after the end of each summer operating season, after the commencement of dual runway operations, the undertaker shall publish their report to the independent air noise reviewer showing the calculated noise performance of the airport informed by actual noise measurements, compared with the noise limits set out in (1) and (2) with an explanation of any exceedances. (5) If, in consultation with the host authorities, the independent air noise reviewer considers that any exceedances reported in (4) are caused by factors within the	'Global trends in Aircraft Noise' '*technology improvements of 0.2 EPNdB per annum for all aircraft entering the fleet from 2024 to 2050.'* Overall, it is intended to provide: • a clear expression of benefits sharing for all those likely to be adversely affected by aircraft noise; • time for the Applicant to develop any necessary supporting processes and tools, including the conditioning of slots, the use of quota count budgets and quota count operational control; and • an incentive for the airlines which they are able to respond to.	

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		control of the undertaker, the undertaker shall modify its approach to the development of its operating plan for the year after next to meet the noise limits set out in (1) and (2).		
R18 (Noise insulation scheme)	Text to be replaced by wording in next column.	**Receptor based mitigation** (1) Within not more than 3 months following the commencement of any of Work Nos. 1 - 7 (inclusive) the undertaker shall submit for approval by the relevant local planning authority a list of premises forecast to be eligible premises at the commencement of dual runway operations. (2) Within not more than 6 months following the commencement of any of Work Nos. 1 - 7 (inclusive) the undertaker must take appropriate steps, having consulted with the relevant local planning authority, to notify the owners and occupiers of all premises on the approved list (1) that the premises has been approved for the design	**Reason:** For example, ANPS 5.68 'Development consent should not be granted unless the Secretary of State is satisfied that the proposals will meet the following aims for the effective management and control of noise, within the context of Government policy on sustainable development: • Avoid significant adverse impacts on health and quality of life from noise; • Mitigate and minimise adverse impacts on health and quality of life from noise; and • Where possible, contribute to improvements to health and quality of life.'	Please see the Applicant's response to this proposal at Annex A to this document (below).

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		and installation of a package of measures that may include ventilation, noise insulation and methods to reduce solar gain to achieve an internal noise environment consistent with guidance. (3) Within not more than 12 months following the commencement of any of Work Nos. 1 - 7 (inclusive) the undertaker must, subject to access being granted to the premises, carry out a survey of all the premises on the approved list and submit, for approval by the relevant local planning authority, proposed designs for all premises on the approved list. (4) The designs submitted by the undertaker and the consideration of them by the relevant local planning authority must have due regard for guidance including Sound Insulation and Noise Reduction for Buildings BS 8233 British Standards Institution (2014), Methods for rating and assessing industrial and commercial sound BS 4142	**Informative** It is considered that local planning authorities should play a role in the design of receptor based mitigation, particularly on behalf of local communities. Designs proposed may affect the appearance of the local built environment and may involve features that would normally require consent, including listed building consent. The take up of such schemes may also be improved through the involvement of the local planning authorities by providing assurance to owners and occupiers that due process has been followed and the designs offered have been appropriately scrutinised against relevant standards. (5) is intended to address the potential for unacceptable living conditions whilst recognising the importance of local context	

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		British Standards Institution (2014), Acoustic design of schools: performance standards BB93 Department for Education (2015) and Acoustics— Technical Design Manual 4032 Department for Health (2011) as relevant. (5) If the relevant planning authority does not approve the receptor based mitigation design for a permanent residence on the approved list because it considers internal living conditions would be unacceptable, the undertaker shall offer the owner of the premises home relocation, which shall include the open market value of the premises and reasonable moving expenses, fees and costs. (6) Subject to agreement by the owner of the premises and access being granted to the premises, the design approved by the relevant local planning authority shall be installed and commissioned before the commencement of dual runway operations.		

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R19 (Airport Operations)	(1) From the date of the commencement of dual runway operations, the airport may not be used for more than 389,000 aircraft movements per annum. (2) The repositioned northern runway must not be used between the hours of 23:00 - 06:00 but may be used between these hours where the main runway is temporarily non-operational by reason of an accident, incident or structural defect or when maintenance to the main runway is being undertaken. (3) Subject to sub-paragraph (4), the repositioned northern runway must not be used—: (a) for aircraft landings; or (b) for departures of aircraft larger than Code C aircraft.	(1) From the date of the commencement of dual runway operations, the airport may not be used for more than 389,000 aircraft movements per annum or a passenger throughout of 80.2 million passengers per annum. (2) The repositioned northern runway must not be used between the hours of 23:00 - 06:00 but may be used between these hours where the main runway is temporarily non-operational by reason of an accident, incident or structural defect or when maintenance to the main runway is being undertaken. (3) Subject to sub-paragraph (4), the repositioned northern runway must not be used—: (a) for aircraft landings; or (b) for departures of aircraft larger than Code C aircraft. (4) Sub-paragraph (3) does not apply and the repositioned northern runway may be used	Sub-paragraph (1) has been added to place a limit on passenger numbers. Larger planes within the ATM limit could lead to a larger number of passengers than assessed within the ES. The justification in the Explanatory Memorandum [REP8-007] regarding sub-paragraph (4)(b) is noted. However, the powers this sub-paragraph would grant are potentially wide ranging and could allow full usage of the northern runway in a manner that potentially bypasses the planning system.	Passenger cap The Applicant has carefully considered the ExA's recommended inclusion of a passenger cap but maintains its position that such a restriction does not meet the policy test of necessity and reasonableness set out in the ANPS at paragraph 4.9. The Applicant reiterates the detailed reasoning provided in response to DCO.1.40 (R19) in its **Responses to ExQ1** [REP3-089] and notes that, since that response, it has further strengthened the **Surface Access Commitments** [REP8-052] including by the provision of interim mode share commitments to be achieved by the first anniversary of the commencement of dual runway operations, a minimum £1 million investment in active travel infrastructure works, obligations to assess the need for additional parking and a suite of rail measures including a £10 million Rail Enhancement Fund together with specific measures in relation

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	(4) Sub-paragraph (3) does not apply and the repositioned northern runway may be used in one or both of the ways stated in that sub-paragraph—: (a) where the main runway is temporarily non-operational by reason of an accident, incident or structural defect or when maintenance to the main runway is being undertaken; or (b) as agreed in writing between the undertaker and the Secretary of State (following consultation with the CAA and CBC). (5) In this requirement "Code C aircraft" means aircraft with dimensions meeting the maximum specifications of code letter C in the Aerodrome Reference Code table in Annex 14, Volume I to the Convention on International Civil Aviation,	in one or both of the ways stated in that sub-paragraph~~—~~: ~~(a)~~ where the main runway is temporarily non-operational by reason of an accident, incident or structural defect or when maintenance to the main runway is being undertaken; or ~~(b) as agreed in writing between the undertaker and the Secretary of State (following consultation with the CAA and CBC).~~ (5) In this requirement "Code C aircraft" means aircraft with dimensions meeting the 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.		to queueing and customer experience at Gatwick Airport Station and a rail monitoring and enhancement plan. The Applicant has also committed to an overall cap for on-airport parking in Requirement 37 (car parking spaces) as an additional limit on car traffic to the airport. This all serves to mitigate any greater effects related to more traffic. In any event, the fact that "*larger planes within the ATM limit could lead to a larger number of passengers than assessed within the ES"* is not a sufficient reason for imposing such a significant constraint as a passenger cap, particularly a constraint on activity (serving passenger demand) which is so directly supported by Government policy because of the benefits it brings. If it were a sufficient reason, every EIA development would be subject to a limit on its use. No party has submitted evidence which suggests that exceedance of passenger numbers in the medium to long term would be

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	as at the date of this Order.			significantly harmful, there is no threshold of acceptability that would be crossed and there are multiple other measures in place to limit, monitor and manage environmental constraints (including the Secretary of State's powers to regulate the use of the airport). The passenger limit is considered to be contrary to policy (both on the use of restrictions but also aviation policy) and not justified. <u>Paragraph (4)(b)</u> Any decision to change the use of the repositioned northern runway pursuant to paragraph (4)(b) would be taken by the Secretary of State following consultation with the UK's expert aviation body, the CAA, and Crawley Borough Council. As a decision taken within the context of a DCO and of a nature that the Secretary of State would inevitably recognise as of local public interest, it is reasonable to anticipate that the Secretary of State would invite representations from the public

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				before making their decision. Therefore, the decision would be taken in a manner facilitating suitable public involvement not dissimilar from a fresh planning decision. The Applicant therefore considers that this drafting does not bypass a proper process for this kind of change and should remain in the draft DCO and be left to the Secretary of State to decide if they consider it acceptable for them to exercise this function.
R20 (Surface Access)	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 Surrey County Council and West Sussex County Council).	(1) 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 Surrey County Council and West Sussex County Council). (2) First use of the following airport facilities shall not be permitted until the mode shares set out below have been demonstrated to have been	To ensure that the impacts of the development as described in the Transport Assessment and the consequential effects set out in the Environmental Statement are not greater than those assessed within the Application. In order to do this, the draft requirement seeks to ensure that the measures within the surface access commitments are secured and linked to land use planning within the dDCO. The concern of the Applicant regarding small variances of the	The Applicant notes that the proposed requirement is the same as that proposed in advance of ISH 9. The Applicant notes the further reasoning provided by the ExA; however, for the avoidance of doubt, the Applicant does not consider the ability for CBC to *"waive"* any *"small variance"* against the target mode share as providing sufficient comfort in the manner the ExA suggest in their reasoning in response to the Applicant's previous comments on this form of wording. Clearly

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		achieved in the Annual Monitoring Report unless otherwise permitted by CBC. a) At least 54% of passengers travelling to the airport used public transport in the monitored year. Should this public transport mode share not be achieved then the Undertaker shall not use the following: • Simultaneous operational use of the northern runway; and • Pier 7 and associated stands. b) At least 55% of passengers travelling to the airport used public transport in the monitored year. Should this public transport mode share not be achieved then the Undertaker shall not use the following: • The South Terminal Hotel Phase 2 on the former car park H; and • The use of multi storey car Park Y.	figures in sub paragraphs (2)(a)-(c) are noted. However, sub paragraph (2) allows for such small variances to be agreed at a local level by CBC.	such agreement would be discretionary on the part of CBC and so still retains the level of unacceptable uncertainty which the Applicant's initial submission addressed. The Applicant therefore maintains its response as set out in **Appendix A to the Applicant's Written Summary of Oral Submissions – ISH 9 Mitigation** [REP8-107], including the ultimate conclusion that the Applicant would consider this form of requirement to introduce an unacceptable level of uncertainty such that the Applicant would be unable to implement any DCO granted that contained it.

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		c) Not more than 44.9% of staff travelling to the airport were car drivers in the monitored year. Should this car driver mode share be exceeded then the Undertaker shall not use the South Terminal Office (on former car park H).		
R23 (Flood compensation delivery plan)	(1) Prior to the commencement of the first of the floodplain works requiring prior mitigation, a flood compensation delivery plan setting out the timeframe for delivering the fluvial mitigation works must be submitted to and approved by CBC (in consultation with the Environment Agency). (2) The authorised development must be constructed in accordance with the flood compensation delivery plan referred to in sub-paragraph (1) unless otherwise agreed in writing with CBC (in consultation	(1) Prior to the commencement of the first of the floodplain works requiring prior mitigation, a flood compensation delivery plan setting out the timeframe for delivering the fluvial mitigation works must be submitted to and approved by CBC (in consultation with WSCC as lead local flood authority and the Environment Agency). (2) The authorised development must be constructed in accordance with the flood compensation delivery plan referred to in sub-paragraph (1) unless otherwise agreed in writing with CBC (in consultation with WSCC as lead local flood authority and the Environment Agency).	To ensure that the lead local flood authority is consulted on the flood compensation delivery plan.	The Applicant is content to adopt this drafting.

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
	with the Environment Agency).			
R32 (Western noise mitigation bund)	(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.	(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. (4) The undertaker must implement the scheme agreed under paragraph (3).	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 Applicant considers that compliance with the proposed drafting would be unfeasible and therefore cannot accept it. New paragraph (3) provides that the removal and replacement of the western noise mitigation bund cannot commence unless a scheme has been agreed with CBC that provides for noise mitigation *"of no less efficacy"* than the existing western noise bund in the period during which that existing bund is to be removed and replaced with the new noise bund and wall. It is a matter of pragmatic reality that noise mitigation offered by a bund will be diminished in the temporary period of time when that bund is being removed and replaced. The Applicant has committed to minimising this impact by securing the delivery of the replacement bund prior to commencement of dual runway operations in Requirement 32 and committing to the measures described in paragraph 5.9.15 of

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
				the **Code of Construction Practice** [REP8-024] (secured by Requirement 7), i.e. providing permanent noise insulation to the potentially affected property and delivering the replacement bund and wall in sequence to minimise 'gaps' in coverage between the existing bund and replacement bund and wall. As described in the Applicant's **Response to Deadline 6 Submissions** [REP7-095] (JLADD6NO2, NO3 and NO4), this approach has been assessed in the Applicant's ES and does not give risk to significant adverse effects.
R35 (Odour monitoring and management plan)	From the date of the commencement of the authorised development, the authorised development and the operation of the airport must be carried out in accordance with the odour monitoring and management plan unless otherwise agreed in writing by CBC (in consultation with RBBC).	(1) The commencement of dual runway operations must not take place until an odour management and monitoring plan has been submitted to and approved in writing by CBC in consultation with RBBC. (2) The odour management and monitoring plan submitted under sub-paragraph (1) must be substantially in accordance with the outline odour management and monitoring	To provide for local authority approval of an odour monitoring and management plan and to ensure that specific concerns at the Horley Gardens Estate are addressed.	The Applicant has already prepared the **Odour Monitoring and Management Plan** (Doc Ref. 10.57) which is not an outline document and which therefore does not require the submission for approval of a subsequent detailed plan. The proposed drafting amendments to this effect are therefore not considered necessary. The Applicant acknowledges the ExA's specific focus in its

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
		plan and must include procedures for monitoring, recording and reporting to CBC on aviation fuel odour and other odour emissions at the Horley Gardens Estate. (3) From the date of the commencement of the authorised development, the authorised development and the operation of the airport must be carried out in accordance with the approved odour monitoring and management plan unless otherwise agreed in writing by CBC (in consultation with RBBC).		proposed amendment on the Horley Gardens Estate and has amended the **Odour Monitoring and Management Plan** (Doc Ref. 10.57) at Deadline 9 to specifically refer to odour monitoring in this area.
R37 (Car parking spaces)	1) The undertaker shall not provide more than 53,260 car parking spaces within the Order limits unless otherwise agreed in writing by CBC. (2) Upon commencement of the authorised development and by no later than each anniversary of that date, the undertaker must submit an annual report to	1) The undertaker shall not provide more than 53,260 car parking spaces or allow the parking of more than 53,260 cars within the Order limits unless otherwise agreed in writing by CBC. (2) Upon commencement of the authorised development and by no later than each anniversary of that date, the undertaker must submit an annual report to CBC providing an update on	To ensure that parking numbers are not exceeded on the site by more extensive use of block parking.	The Applicant acknowledges the ExA's concerns in relation to the use of block parking and agrees that the stated number of car parking spaces should not be exceeded by more extensive use of block parking. However, the Applicant considers that the ExA's proposed alterations to the requirement wording goes beyond what is necessary to address the concern, is disproportionately

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
	CBC providing an update on the number of car parking spaces provided by the undertaker within the Order limits.	the number of car parking spaces provided by the undertaker and cars parked within the Order limits.		restrictive and lacks certainty, such that compliance with the proposed drafting would be unfeasible. The Applicant is content for car parking to be controlled and considers the most effective way to do this is by way of a control on the number of passenger and employee car parking spaces provided by the undertaker within the Order limits. The Applicant is concerned that by extending the application of the control to all cars parked within the Order limits would result in unintended consequences in respect of enforcement and monitoring. For example, under the ExA's recommended drafting, the Applicant may be considered to be in breach of its DCO if cars "parked" in drop-off/pick-up areas in long-stay parking (even if only for short periods), operational or emergency vehicles attending incidents, or construction or maintenance vehicles parked in non-public areas and controlled by the Applicant are considered to be within the parking cap. This approach would potentially

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
				require the Applicant to monitor every car entering and exiting the airport and the parking areas (including operational, emergency and service vehicles), monitoring the time spent in those areas, and making a value judgment as to whether those cars were "parked". The Applicant is concerned that the ExA's recommended amendment would require a level of monitoring which is not currently in operation or proposed as part of the Project, and is generally inconsistent with how airport parking is controlled at other UK airports. In particular, the Applicant notes that condition A85 of Heathrow's Terminal 5 planning permission (ref: 47853/APP/2002/1882) controls the provision of car parking spaces (rather than the number of cars parked) as does the final draft for the London Luton Airport Expansion Development Consent Order. The Applicant therefore cannot accept it and has instead proposed alternative drafting which the Applicant considers

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
				captures the intent of the ExA's recommended amendment whilst ensuring it is enforceable, precise and reasonable in all other respects.[1] The Applicant proposes including a definition of "Car Parking Spaces" so that it is clear that all passenger and employee car parking products provided by the undertaker are captured, including self-park, block-park, valet parking, staff parking *and any other parking types used by airport passengers and staff within the Order limits.* This tailpiece (in italics) is intended to be all encompassing to provide comfort to the Secretary of State (and JLAs) that as parking products and technology evolves, the control on parking will remain effective. An example of the parking products that would be captured by this tailpiece is the premium sub-products where passengers can pre-book additional services such as car washing and valeting services alongside standard parking products.

[1] Use of planning conditions planning practice guidance (PPG), 23 July 2019, paragraph 003 Reference ID: 21a-003-20190723

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
				The Applicant has also added drafting to address the ExA's recommended requirement concerning the application of permitted development rights, for the reasons further explained in the Applicant's response in the line below (New R1).

Number	Proposed Drafting	Reason	Applicant's Response (Deadline 9)
NEW REQUIREMENTS			
New R1 (Removal of permitted development rights relating to the provision of additional car parking)	Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 8, Class F - development at an airport (or any order revoking and re-enacting that Order with or without modification), no additional car parking shall be provided at the airport unless otherwise permitted by CBC.	To ensure that the impacts of the development as described in the Transport Assessment and the consequential effects set out in the Environmental Statement are not greater than those assessed within the Application. The ExA acknowledges the alternative total parking control suggested by the Applicant in R37 above, but in the absence of detailed responses from Interested Parties this new Requirement remains as the ExA's recommendation.	The Applicant considers that its Requirement 37 (car parking spaces) achieves the goal pursued by the ExA with this new requirement and therefore does not consider that a further separate requirement in the form proposed is necessary. The Applicant also considers that it is not clear from the proposed drafting the baseline against which *"additional"* car parking is to be measured and is concerned that this drafting could be interpreted to mean no

Number	Proposed Drafting	Reason	Applicant's Response (Deadline 9)
			parking additional to that *at the time of the grant of the DCO*, thereby inadvertently imposing a requirement for CBC approval before the car parking comprised in the authorised development can be delivered. Instead, the Applicant has supplemented the drafting of its existing Requirement 37 to make clear that the parking cap applies to any parking delivered under the Applicant's permitted development rights, which the Applicant hopes addresses the intention underlying the ExA's drafting.
New R2 (Control of engine testing)	During the carrying out of Work No.18(a) and 18(b), no engine testing may take place at the Taxiway Juliet West Spur as shown on Figure 5.2.1A of the Project Description Figures of the Environmental Statement, unless otherwise agreed in writing by CBC.	To control the effects of engine testing during the implementation of Work No. 18.	The Applicant is content to adopt this drafting and has done so as a new sub-paragraph of its existing Requirement 32 (western noise mitigation bund).
New R3 (Host authorities' fees)	(1) No part of the authorised development is to commence until the undertaker has entered into a planning performance agreement with the host authorities to cover the host authorities' costs, on a cost recovery basis, of – (a) consenting or approving any application under any article; (b) agreeing, endorsing or approving any requirement; and	To provide appropriate cost recovery for local authorities in undertaking the assessment of requirement discharge applications.	The Applicant has provided for funding of CBC's relevant costs and the entering into of a planning performance agreement with the host authorities in Schedule 9 (Council Resources) to the **section 106 Agreement**, which

Number	Proposed Drafting	Reason	Applicant's Response (Deadline 9)
	(c) responding to any consultation under this Order. (2) Any difference arising between the host authorities and undertaker in respect of the content of any planning performance agreement may be resolved by arbitration under article 54 (arbitration).		has been agreed with the host authorities and is out for execution.

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
SCHEDULE 11				
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.	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.	To ensure that the discharging authorities have sufficient time to deal with requests and applications, with the time periods reflecting those under the Town and Country Planning Act regime.	The Applicant maintains its position that this additional category of works and longer time period – here, 13 weeks and 9 weeks in place of 8 weeks and 6 weeks – is not justified and refers to its earlier submission in row 44 of **Appendix A** to its **Response to Deadline 7 Submissions** [REP8-115] in support of this. The proposed drafting would mean that a maximum 13-week or 9-week decision period would apply to an application to discharge any requirement in respect of any part of the authorised development that

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
	(2) For the purposes of sub-paragraph (1), the decision period is— (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 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 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 discharging authority in writing before the end of the period in sub-paragraph (i) or (ii); and	(2) For the purposes of sub-paragraph (1), the decision period is— (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 <u>(or in the case of major works, 13 weeks)</u> 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 <u>(or in the case of major works, 13 weeks)</u> 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 discharging authority in writing before the end of the period in sub-paragraph (i) or		constituted part of the included 'major works'. Hence, to take an extreme example, CBC would have 9 weeks to approve a construction dust management plan for dust generating activities in connection with the construction of the replacement CARE facility. The Applicant considers that to be excessive. Further, the Applicant is unclear the basis on which the 'major works' have been selected. For example, Work No. 9 (replacement CARE facility) is merely the relocation of an existing facility and it is unclear why this is considered a 'major' work. A 13-week time period (the maximum proposed in the drafting) accords to the decision period for a full planning application for major development under the Town and Country Planning Act 1990 ("**TCPA 1990**"). Such an application is not comparable to the approval of details or documents under requirements in a DCO (the majority of which

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
	(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 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 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 discharging authority in writing before the end of the period in sub-paragraph (i) or (ii).	(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, 9 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, 9 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 discharging authority in writing before the end of the period in sub-paragraph (i) or (ii) (such		are focussed on particular topics (e.g. landscaping or construction traffic management) and it is not warranted to replicate TCPA 1990 time periods for decision-making on such details. The Applicant emphasises that an 8-week decision period for discharge of requirements is the standard approach in made transport DCOs, including where that decision-maker is the Secretary of State (e.g. paragraph 17 of Schedule 2 to the M3 Junction 9 Development Consent Order 2024) or another approving authority (e.g. paragraph 22 of Schedule 2 to the A12 Chelmsford to A120 Widening Development Consent Order 2024 and paragraph 25 of Schedule 2 to the Manston Airport Development Consent Order 2022). The Applicant reiterates its submissions above about the need to follow the granting Government Department's well-established drafting unless there are particular reasons to depart from it. Here there are

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
		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); (vii) Work No. 26 (Works to construct a hotel north of multi-storey car park 3);		no such reasons. The Applicant further refers to the Government policy in support of removing hurdles to delivery of nationally significant infrastructure, as set out in the Chapter 25 (DCO, s106 and Control Docs) of the Applicant's **Closing Submissions** (Doc Ref. 10.73). The justification provided by the JLAs in [REP8-163] for requesting the longer periods is that they may have to deal with a large number of applications in an intensive period. But that will be the case for all of the precedent DCOs that adopted an 8-week time period, which also consented nationally significant infrastructure projects. Finally, it is precisely to alleviate the JLAs' concerns regarding adequate resourcing to handle applications connected with the Project that the Applicant has agreed in Schedule 9 (Council Resources) of the s106 Agreement to fund the costs of CBC employing a planning

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
		(viii) Work No. 27 (Works to construct a hotel on the car rental site); (ix) Work No. 28 (Works associated with the Car Park H Site); (x) Work No. 29 (Works to convert the existing Destinations Place office into a hotel); (xi) Work No. 30 (Works to construct Car Park Y); (xii) Work No. 31 (Works associated with Car Park X)		officer at least four months prior to commencement of the authorised development and also to enter into a PPA on a cost-recovery basis with the host authorities. Provided sufficient resource is available to the JLAs, there is no reason that they should require a decision period so far removed from the bulk of precedent.
Fees	3.— (1) Where an application is made to a discharging authority for agreement, endorsement or approval in respect of a requirement to which this Part of this Schedule applies, the fee contained in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(1) (as may be amended or replaced from time to time) is to apply and	~~(1) Where an application is made to a discharging authority for agreement, endorsement or approval in respect of a requirement to which this Part of this Schedule applies, the fee contained in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(1) (as may be amended or replaced from time to time) is to apply and~~	The inclusion on New Requirement 3 would negate the need for this provision.	These deletions are accepted. Please see the Applicant's response to new Requirement 3 above on the wider point around JLA fees.

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
	must be paid to that authority for each application. (2) Any fee paid under this Schedule must be refunded to the undertaker within a period of 35 days of— (a) the application being rejected as invalidly made; or (b) the discharging authority failing to determine the application within the decision period specified in paragraph (1) of this Part, unless within that period the undertaker agrees in writing that the fee may be retained by the discharging authority and credited in respect of a future application.	~~must be paid to that authority for each application.~~ ~~(2) Any fee paid under this Schedule must be refunded to the undertaker within a period of 35 days of—~~ ~~(a) the application being rejected as invalidly made; or (b) the discharging authority failing to determine the application within the decision period specified in paragraph (1) of this Part, unless within that period the undertaker agrees in writing that the fee may be retained by the discharging authority and credited in respect of a future application.~~		

Reference	Text as set out in the draft DCO [REP8-005]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
Schedule 12				
	Non-Highway Works for which Detailed Design Approval is Required:	Non-Highway Works for which Detailed Design Approval is Required:	To protect the character and appearance of the area and to ensure Good Design the	The Applicant continues to consider that the addition of works to Schedule 12 is

Reference	Text as set out in the draft DCO [REP8-005]		ExA's Recommended Amendment/ Insertion:		Reasons and Notes	Applicant's Response (Deadline 9)
	Work No	Work description	Work No	Work Description	number of works has been added to. These works have been added given the scale of the proposed works and potential visibility outside the Airport site, as well as to potential receptors within the Airport site.	unnecessary. However, it is content to add the works proposed by the ExA on the basis that the ExA has concluded that this is justified.
	22 (a)-(c)	Extending the North Terminal International Departure Lounge	16	A new aircraft hangar		
	23(a)	Extending the South Terminal International Departure Lounge	22 (a)-(c) & (g)	Extending the North Terminal International Departure Lounge and to construct a multi storey car park		
	26	Hotel north of multistorey car park 3	23(a)	Extending the South Terminal International Departure Lounge		
	27	Hotel on the car rental site	26	Hotel north of multi-storey car park 3		
	28(a)	Hotel on the Car Park H site	27	Hotel on the car rental site		
	40(a)	Pedestrian footbridge over the River Mole	28 (a)-(c)	Hotel, office and multi storey car park on the Car Park H site		

Reference	Text as set out in the draft DCO [REP8-005]		ExA's Recommended Amendment/ Insertion:		Reasons and Notes	Applicant's Response (Deadline 9)
			29	Conversion of Destinations Place into a hotel		
			30	Car Park Y		
			31	Car Park X		
			40(a)	Pedestrian footbridge over the River Mole		

Reference	Text as set out in the draft DCO (REP8-005)	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
Schedule 13				
Informative Maximum Parameter Heights	Informative Maximum Parameter Heights	~~Informative~~ Maximum Parameter Heights	To provide greater clarity about the height of buildings and other works, as 'informative' lacks precision.	The Applicant is unclear as to the ExA's intention behind this change. If it intends for Schedule 13 to bind the Applicant, other changes to e.g. Article 6 (limits of works) would have been expected to give effect to that. In any event, the Applicant resists such a change for the reasons previously explained in response to DCO.2.4 in the Applicant's

Reference	Text as set out in the draft DCO (REP8-005)	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
				Responses to ExQ2 [REP7-081]. However, if the ExA simply disagrees with the choice of word of "informative" but accepts that the Parameter Plans and not Schedule 13 are the appropriate means by which to control maximum development heights across the site, the Applicant is content to simply name the schedule "Maximum Parameter Heights" provided that the explanatory text that the schedule is 'for information only' remains in Article 6(3) and the footnote to Schedule 13 itself. The Applicant has made this change in the **draft DCO** (Doc Ref. 2.1 v11).
Informative Maximum Parameter Heights		(1) Work No. 41(b) (2) Work Description Works at Pentagon Field to permanently raise the around level (3) Maximum building or other works height (m) 4 metres (1) Work No. 38(d)	To provide greater clarity about the height of buildings and other works.	The Applicant has added reference to these works to Schedule 13 and has noted in a footnote to the schedule that these maximum heights are provided for in the Design Principles rather than the Parameter Plans.

Reference	Text as set out in the draft DCO (REP8-005)	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
		(2) Work Description Undertake earthworks, landscaping and a bund around the southern and eastern perimeter (3) Maximum building or other works height (m) Bund 6 metres		

Reference	Text as set out in the oLEMP [REP8-058]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
OUTLINE LANDSCAPE AND ECOLOGY MANAGEMENT PLAN				
Paragraph 1.1.4	Each LEMP will include the following: • […]	Each LEMP will include the following: • […] • An explanation of how the proposed tree planting for that area contributes to the achievement of the CBC tree replacement requirement as set out in Policy CH6 (Tree Planting and Replacement Standards) of Crawley	Paragraph 1.1.4 of the oLEMP amended to include an additional bullet point to ensure that each LEMP demonstrates that the tree planting proposed in that area takes into account the CBC tree replacement requirement in Policy CH6 of the Crawley Borough Local Plan.	The Applicant has submitted an updated version of the **Outline Landscape and Ecology Management Plan** (Doc Ref. 5.3) at Deadline 9 taking account of the ExA's suggested change, but with the following minor differences: (i) The text added to the oLEMP also includes reference to the number of trees to be removed within the relevant area (subject to the LEMP) which is required under the CH6 policy formula; and

Reference	Text as set out in the oLEMP [REP8-058]	ExA's Recommended Amendment/ Insertion:	Reasons and Notes	Applicant's Response (Deadline 9)
		2030: Crawley Borough Local Plan 2015-2030 (adopted on 16 December 2015).		(ii) The text added to the oLEMP excludes ExA's suggested word 'achievement to ensure it is clear that each LEMP is not required to achieve compliance with Policy CH6, as such compliance will be demonstrated by the Tree Balance Statement (under DCO Requirement 39).

3 Annex A – Applicant's response to the Examining Authority's proposed amendments to DCO requirements relating to noise

Table of Contents

1 Introduction

1.1 Purpose of this Document

This Annex provides the Applicant's response to the Examining Authority's proposed amendments to the DCO requirements relating to noise:

- Paragraph 1 (Interpretation)
- Requirement 15 (Air noise envelope)
- Requirement 16 (Air noise envelope reviews)
- Requirement 18 (Noise insulation scheme)

2 Noise

2.1 Interpretation

2.1.1 The ExA's proposals state:

Eligible premises shall mean buildings used as a permanent residence, school, hospital, library, place of worship, or community facility where, following the commencement of dual runway operations, and the undertaker having taken all reasonable operational and design measures on airport to reduce noise, air noise, ground noise or combined air and ground noise is predicted to exceed LAeq, 16 hr 54 dB on an average summer day, and buildings used as a permanent residence where, following the commencement of dual runway operations, air noise, ground noise or combined air and ground noise is predicted to exceed LAeq, 8 hr 48 dB, on an average summer night.

2.1.2 The Applicant welcomes the clarification that buildings must be permanently occupied, as opposed to the earlier draft referring to building being partly used.

2.1.3 The Requirement refers to eligible premises *as 'buildings used as a permanent residence, school, hospital, library, place of worship, or community facility…'*

2.1.4 The Applicant has brought forward a Noise Insulation Scheme for residential properties and for schools which has been updated during the Examination (**ES Appendix 14.9.10 Noise Insulation Scheme Tracked** [REP8-086]). A further updated version is submitted at this Deadline 9. In respect of the properties which the Applicant is proposing to provide noise insulation for, the Applicant makes the following comments.

2.1.5 With regards hospitals the ES identifies one whose predicted noise level is below Leq 16 hr 54 dB (with an increase in 2032 of 0.7dB over the baseline), so it would not qualify.

2.1.6 The ES assesses noise impacts on 17 places of worship. There are two places of worship where the Project is predicted to reduce $L_{eq,\ 16\ hour}$ daytime noise levels by up to 1.0dB (ES Chapter 14 [APP-039] paragraphs 14.9.159 to 161 give details and ES Appendix 14.9.2 [APP-172] gives predicted noise levels). These are ref 48 St Michael's and All saints in Lowfield Heath and ref 15 Gurjar Hindu Union in Ifield. Of the 15 places of worship where noise levels are predicted to increase, the increases are less than 1dB for 12 and between 1 to 1.4 dB at three.

2.1.7 The ES assesses noise impacts at 7 community buildings. At one a reduction of 1.0dB is predicted. At the other 6 increases of up to 1.0dB are predicted.

2.1.8 Inspection of the Leq 16 hr noise change contours provided in **ES Addendum - Updated Central Case Aircraft Fleet Report** [REP8-012] indicates there are no libraries within the Leq 16 hr 51dB contour with noise changes greater than those discussed above.

2.1.9 Depending on the level of noise from other ambient noise sources, in particular from road traffic (not increased by the Project), these predicted increases and decreases at places of worship, community buildings and libraries, may or may not result in increases or decreases in total noise levels at these buildings. In all cases the changes in aircraft noise are low and would result in negligible or minor effects, which would not be significant. There is therefore no need for mitigation at these properties as no persons at these properties would experience significant increased disturbance or adverse effects as a result of the Project, and the Applicant therefore does not propose to offer noise insulation for libraries, places of worship, or community facilities. Nor does it agree with the suggestion that it would be sound to require this, in circumstances where it has been clearly shown that this is not reasonable or necessary to achieve the requirements of relevant policy.

2.1.10 The Applicant acknowledges that other Projects have offered noise insulation schemes for community buildings, but because the noise increases of this Project are negligible or minor, mitigation is not required in this case. Each application must be considered on the basis of its own impacts, rather than applying an approach from another project with different impacts where such mitigation *is* necessary.

2.1.11 The suggested definition refers to *'air noise, ground noise or combined air and ground noise is predicted to …*

2.1.12 The ExA's proposed amendments call for the NIS Outer Zone to be extended to include ground noise or combined noise from air noise and ground noise at levels above Leq 16 hr 54dB and Leq 8 hr night 48dB whereas currently ground noise is not covered specifically in the Outer zone between Leq 16 hr 54 and 63dB.

2.1.13 To consider this, first it is important to recall the distinction between ground noise and air noise. In Paragraph 14.4.1 of the ES the terms air noise and ground noise are defined:

- air noise – noise from aircraft in the air or departing or arriving (including reverse thrust) on a runway, generally assessed to a height up to 7,000 feet above ground level;
- ground noise – noise generated from airport activities at ground level including aircraft taxiing and traffic within the airport boundary;

2.1.14 Air noise includes noise generated by aircraft on the runway. The distinction between air and ground noise is perhaps misleading in this sense, and comes about not so as to distinguish the locations of the noise sources, ie on the ground or in the air, but actually because of the way aircraft noise is modelled. Air noise models include noise from aircraft making their take off run, at full or near to full thrust. These models also include aircraft arriving onto the runway, slowing, including the use of reverse thrust in some cases, along the runway before leaving it. During take-off and landing these air noise levels are the highest levels of noise experienced in communities around the airport perimeter. Ground noise is from the remaining sources, predominantly aircraft taxing but also from aircraft on stands and engine tests which occur about once every three days. It is quite clear from the air and ground noise modelling that air noise, including aircraft on the runway taking off and landing, is the predominant noise source at most locations around the airport perimeter. **Appendix B of Supporting Noise Technical Notes to Statements of Common Ground** [REP6-065] provides the detailed assessment of ground noise and concludes that there are only approximately 16 properties significantly affected by ground noise from the Project that are outside the air noise insulation Inner (SOAEL) zone, and most of these are within the Leq 16 hr Outer Zone. In these two areas to the south and north of the airport these properties will be provided the full Inner Zone noise insulation package to avoid significant effects. The Applicant has based the NIS Outer Zone on air noise predictions and added to it where necessary in the two areas where significant ground noise effects are predicted. The Applicant's

position is that there is no justification in extending the Outer Zone for lower levels of ground noise which the ES has demonstrated will not give rise to significant noise effects.

2.1.15 The Applicant has in various places made clear that air noise and ground noise levels cannot be combined and assessed as one, as follows:

2.1.16 Section 14.11 of the ES addresses the potential for cumulative impacts. Paragraph 14.11.2 notes there are no reliable means of quantitatively assessing the overall noise effect resulting from these different noise sources, so the overall effect of noise from combined sources is discussed qualitatively.

2.1.17 Ground noise is quite different in character, being more continuous, usually made up of multiple overlapping sources and of course arriving at a receptor having been propagated at ground level, and so it is assessed differently too in the context of other ambient noise including road traffic noise. So, although the LOAELs and SOAELs for air and ground noise are numerically the same, they are assessed and mitigated separately and the noise levels should not be added together and treated as one.

2.1.18 Additionally, a significant part of what the average person might consider to be ground noise is likely to be the noise made by aircraft starting their take-off roll on the runway, or using reverse thrust to slow down. This noise component has a distinct character, however, it is assessed within the ES as Air Noise as discussed above, and is included in the air noise contours and hence is already within the proposed Noise Insulation Scheme.

2.1.19 The qualitative assessment of cumulative effects provided in ES Section 14.11 takes account of 4 main factors, as follows:

- whether the effects from the different sources would be likely to occur at the same time, or the same time of day – it is unlikely in some areas, because for easterly and westerly operating modes taxiing patterns will vary ground noise levels differently to air noise ;
- the duration of any combined effects –additive effects would vary across easterly/westerly operating modes, between day and night, and from day to day;
- whether the effects on individual receptors are likely to be on the same façade of the property – in some cases air noise from above will have greatest effects on facades to the rear of properties away from ground level noise sources such as ground noise and road traffic noise.

- Whether one effect dominates or whether effects might be additive – All but one of the approximately 80 properties identified as significantly affected by air noise, in Ifield Road, Russ Hill, Balcombe Road and Peeks Brook Lane, are not identified to be significantly affected by ground noise (the exception is Westfield Place, a residential property on Lowfield Heath Road south of Charlwood which will be offered the full Inner Zone package of noise insulation). This is because air noise is at its highest to the East and West of the airport under the flight paths, and its effects can be several kilometres from the airport, whereas ground noise affects properties close to the airport boundary, and there are no noise sensitive properties located in the area overflown very close to the airport boundary to the east and west ends of the airport, primarily for safety reasons.

2.1.20 Therefore, the addition of noise from air and ground noise will not necessarily add to significant effects.

2.1.21 The Applicant therefore does not accept that the combined air and ground noise can be predicted to determine eligibility for a noise insulation scheme. Instead, the Applicant has committed to measuring noise, as opposed to predicting it, to identify cumulative effects in the Noise Insulation Scheme (**ES Appendix 14.9.10 Noise Insulation Scheme Tracked** [REP8-086]): '*Where ground noise is assessed through measurement after opening, the cumulative noise levels from ground noise and air noise will be considered in assessing eligibility for the Inner Zone NIS'*.

2.1.22 The ExA Requirement states: *'…where… ground noise is predicted to exceed LAeq, 16 hr 54 dB on an average summer day, and … predicted to exceed LAeq, 8 hr 48 dB, on an average summer night*.

2.1.23 The Noise Insulation Scheme proposed by the Applicant includes an Inner Zone (above SOAEL) for air noise and ground noise, which meets the policy requirement to avoid significant effects on health and quality of life, i.e. above SOAEL. It is considered important to have this zone distinguished so that a full package of noise insulation can be offered with a commensurate budget. It is now common practice at UK airports to have different zones to meet this policy requirement.

The Noise Insulation Scheme proposed by the Applicant includes an Outer Zone for noise levels above Leq 16 hr 54dB for air noise, but not for ground noise. The reasons for this have been given previously and can be summarised as follows.

2.1.24 The Noise Insulation Scheme proposed by the Applicant includes an Outer Zone for air noise in recognition of the latest emerging policy guidance in the most recent Government consultation document Aviation 2050 (Department for Transport, 2018b) that refers to the 54 dB LAeq, 16 hour contour. This relates to air noise, however, the NIS is explicit that in addition, eligibility due to ground noise may also be established on the basis of measurements of levels of ground noise carried out after the Project is operating. The areas where this is considered possible are mainly to the north and to the south of the airport where the Inner Zone runs close to or inside the airfield. Where ground noise is assessed through measurement after opening, the cumulative noise levels from ground noise and air noise will be considered in assessing eligibility for the Inner Zone.

2.1.25 There is no policy guidance for noise insulation for ground noise. The Applicant understands that the specific guidance on noise insulation for air noise is because of the particular quality of air noise, being a series of peaks, and that because over the greater part of the areas away from the airport affected by noise, it arrives from above and is difficult to mitigate by screening, operational controls and on-the-ground design measures, compared to road traffic noise, railway noise, industrial noise and airport ground noise. There is no such guidance to offer noise insulation for road traffic noise or railway noise below SOAEL, and the Applicant's approach to ground noise is consistent with this.

2.1.26 At Gatwick Airport ground noise is mitigated in the baseline by a combination variously, of operating procedures, a sizeable noise bund running around the northern perimeter of the airport (up to 12m high in places), and the 11m high serpentine noise wall that can be seen around the eastern apron area between the north and south terminals. Additional screening is provided by the Airport Terminal and its Pier buildings, hangars and other buildings. The project provides for a new noise wall of circa 450m length on the western boundary (8-10m high) and additional bunding at Museum Field. This mitigation meets the noise policy requirement to minimise adverse effects. With the inclusion of ground noise in the Inner Zone meeting the policy requirement to avoid significant effects on health and quality of life, i.e. above SOAEL, this ensures that ground noise is mitigated in accordance with policy.

2.1.27 As to whether ground noise below SOAEL is adequately mitigated, the extent of the noise effect is of course relevant. The ground noise assessment (**Appendix B - Ground Noise Fleet Assessment of Supporting Noise and Vibration Technical Notes to Statements of Common Ground** [REP3-071] reports significant ground noise effects and identifies where these are not in the Inner

Zone, and these have been added to the Inner Zone as listed and mapped in **ES Appendix 14.9.10 Noise Insulation Scheme Tracked** [REP8-086]. This ensures that significant effects of ground noise from the Project are mitigated as required by policy.

2.1.28 The Applicant is aware that the Luton expansion project has offered noise insulation for ground noise at levels below SOAEL, although it notes in the Luton NIS '*The approach to ground noise modelling for the noise insulation scheme will be agreed in writing with Luton Borough Council*'. It also notes that the noise barrier referred to in the Luton Application appears to be significantly lower in height (4m).

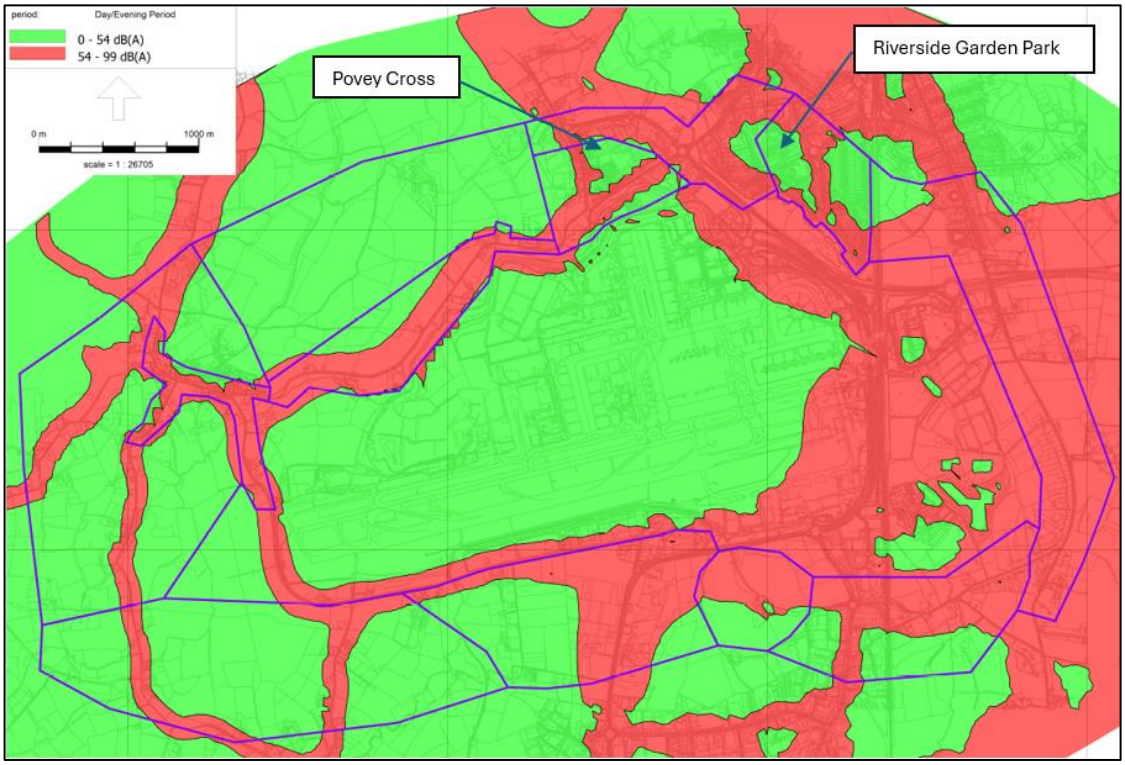
2.1.29 The Applicant has described in various places how ambient noise has been taken into account in the ground noise assessment at Gatwick and why this is essential when considering ground noise effects because, at Gatwick, road traffic noise from the A23, Povey Cross Road and other roads around the airport masks ground noise to varying extents in these areas. This may or may not be the case at Luton which may have other differences warranting a different approach, although that approach is still subject to clarification.

2.1.30 The Applicant's position is that ground noise is properly mitigated by operational procedures, the noise screening and the proposed noise insulation scheme and no further noise insulation is required by policy.

2.1.31 However, should the Secretary of State consider it necessary to have a ground noise insulation scheme for noise levels above LAeq 16 hr 54 dB for this project, the Applicant would develop such a scheme accounting for ambient noise so the scheme is not applied to areas where ground noise is not significant compared to road traffic or other ambient noise.

2.1.32 The two areas where ground noise may be above this level, and not already within the NIS Outer Zone are in Povey Cross and the north end of Riverside Garden Park, Horley. There would be few properties above this level to the south of the airport or elsewhere that are not already within the NIS. Both these areas are subject to high level of road traffic noise, and in large parts of them road traffic noise is above Leq 16 hr 54dB. In these areas ground noise effects would not increase overall noise effects, ie there is no ground noise effect and hence no need to reduce or mitigate it. The figure below, using the road traffic noise modelling shown in Figure 14.6.33 of the ES, illustrates the sizeable parts of these areas where road traffic noise is above LAeq, 16 hr 54 dB.

Figure 2.1 $L_{eq\ 16\ hr}$ Road Traffic Noise Levels (2018)



2.1.33 This figure shows quite clearly that road traffic noise levels are above the potential ground noise insulation threshold of Leq 16 hr 54dB in sizeable parts of the Povey Cross and the north end of Riverside Garden Park, Horley areas. Ground noise levels have already been predicted at 8 locations in the three assessment areas covering these areas: - see Table 12 of **Appendix B - Ground Noise Fleet Assessment of Supporting Noise and Vibration Technical Notes to Statements of Common Ground** [REP3-071]. For easterly operations (runway 08) this shows predicted ground noise levels are below Leq 16hr 54dB in all but one case, where 55dB is reached. On westerly (runway 26) operations predicted ground noise levels vary between Leq 16hr 52 and 59dB, averaging 55dB, ie just above the potential Leq 16 hr 54dB noise insulation threshold. It is worth noting here that the ground noise model is conservative and actual levels may be lower. In summary, there are areas in Povey Cross and the north end of Riverside Garden Park, Horley where ground noise is predicted to be just above the threshold, but for large parts of these residential areas ground noise levels are well below existing road traffic noise, and ground noise would be masked by road traffic noise and there could be no justification for considering noise insulation for ground noise.

2.1.34 If the Secretary of State considers it necessary to have a ground noise insulation scheme for noise levels above Leq, 16 hr 54 dB, the Applicant would develop

such a scheme which could be secured within any DCO. The features of such a scheme would include:

- A further refined ground noise model calibrated by long term noise surveys including in areas most likely to be affected if practicable, to predict 92 day average summer Leq 16 hr and 8 hr night noise levels.
- A methodology to account for ambient noise so as avoid offering noise insulation where ground noise is not significant compared to road traffic or other ambient noise.
- A methodology to account for air noise so as to avoid offering noise insulation where ground noise is not significant compared to air traffic.
- The addition of qualifying properties to the Outer Zone 3 Noise Insulation Scheme.

2.1.35 The ExA's proposed Requirements in relation to eligible premises provides a qualifying criterion that "…*following the commencement of dual runway operations, air noise, … is predicted to exceed LAeq, 8 hr 48 dB, on an average summer night".*

2.1.36 The Noise Insulation Scheme proposed by the Applicant includes an Outer Zone for air noise to respond to the policy guidance in the most recent Government consultation document Aviation 2050 (Department for Transport, 2018b) that refers to the 54 dB LAeq, 16 hour contour. No such guidance is offered on noise levels at which to offer noise insulation at night. This may be because there is common relationship between levels of day and night noise so that the level of night noise protection is implicit with the day noise standard.

2.1.37 The ExA proposed Requirement refers to a noise insulation standard of LAeq, 8 hr 48 dB to determine eligibility. The Applicant can find no guidance in policy to support this suggestion. The Applicant has noted that the proposed noise insulation scheme Outer Zone boundary set at Leq 16 hr 54dB in fact roughly coincides with the Leq 8 hr 48 dB boundary, although interested parties have shown the area to the east where the latter is slightly larger. This is far less so in the west. Given the lack of any basis for the proposed Leq 8 hr 48 dB boundary, the Applicant does not propose to amend the NIS to adopt this level.

2.1.38 The Applicant notes the Luton Airport expansion project proposes 5 NIS zones, which include a zone set to at the night-time SOAEL, Leq 8 hr 55dB, which is the same as the Applicant's Inner Zone boundary. The Luton project does not set a noise insulation scheme specific to night noise below this level. It does not adopt the Leq 8hr 48dB level proposed by the ExA. It is also relevant to note that the Luton project predicts considerably greater increases in night flights giving noise

impacts at night substantially greater than at Gatwick (the Luton project has an increase in population within the night LOAEL of 19,500 in 2039 compared to an increase of 3,400 at Gatwick in the year of greatest air noise impact, 2032).

2.2 Requirement 15 Air Noise Envelope

Air noise limits

2.2.1 *The ExA's proposed Requirements state:*

(1) From the commencement of dual runway operations, the operation of the airport shall be planned to achieve a predicted air noise contour area that:

for an average summer day is at least 10% less than the value of the 51 dB air noise contour area calculated for an average summer day in 2019; and

for an average summer night is at least 10% less than the value of the 45 dB air noise contour area calculated for an average summer night in 2019.

(2) Five years after the commencement of dual runway operations, and every fifth year thereafter until 2049, the operation of the airport shall be planned to achieve a predicted air noise contour area that: for an average summer day reduces the 51 dB air noise contour area by at least a further 10% and for an average summer night reduces the 45 dB air noise contour area by at least a further 10%

2.2.2 The ExA's proposal is similar to that made within Annex B to the agenda of ISH9 but has now converted the 0.5dB reductions into 10% area reductions. The Applicant has modelled the 0.5dB reductions (in AEDT) and notes the percentage area reductions now proposed are similar, but in fact are slightly larger reductions. Therefore, the response the Applicant provided at Deadline 8 (**10.62.2 Appendix A - The Applicant's Response to Annex B of the ISH9 Agenda** [REP8-106]) equally applies. The contour area of both the ExA proposals are shown in Figure 2.4 and 2.5 below with each identified by their dates, and it can be seen that the 10% area reduction proposal dated 14/8/2024 is slightly smaller (i.e. stricter) than the 0.5dB reduction proposal dated 30/7/2024.

2.2.3 The Applicant notes the ExA has not changed the proposed noise limits (except to tighten them slightly) despite the Applicant providing at Deadline 8 reasons why the proposed noise limits would be unworkable, and also explaining how the ICAO's Global Trends 2022 paper does not support them. Therefore, some further analysis and comment is provided herein. First, however, it may be helpful to summarize what the Applicant's proposed noise envelope limits amount to,

expressed in the same terms which are used by the ExA. The Applicant's proposal can be expressed in these terms as follows:

1) From the commencement of dual runway operations, the operation of the airport shall be planned to achieve predicted air noise contours areas that:

   For an average summer day is equivalent to or less than the value of the 51dB air noise contour area calculated for an average summer day in 2019; and

   For an average summer night is equivalent to or less than the value of the 45dB air noise contour area calculated for an average summer day in 2019.

2) Nine years (first review period) after the commencement of dual runway operations, the operation of the airport shall be planned to achieve predicted air noise contour areas that:

   For an average summer day reduces the 51dB air noise contour area by at least 10% compared to the 2019 level, and

   For an average summer night reduces the 45dB air noise contour area by at least 15% to the 2019 level.

3) Following the first review period, the subsequent reviews shall take place on a five yearly basis until 2049, based on the outcome of the operating plan prepared by the undertaker for the next five year period.

2.2.4 This way of expressing the Applicant's proposals makes it clear that, even with the dual runway operation, the airport will not be noisier than it was in 2019 and that within nine years the airport will have noise contours at least 10% smaller in the day and 15% smaller in the night than 2019. Beyond this, further noise improvement is likely, but the exact level cannot be guaranteed now due to uncertainty about future engine technology, particularly that which will be associated with zero carbon flight. The envelope will however be reviewed on a 5 yearly basis and further tightened if appropriate.

2.2.5 This is in contrast to the ExA's noise envelope which requires noise reduction levels which could only be achieved by preventing growth at the airport and then incrementally reducing even the number of flights that Gatwick currently operates. This is explained in more detail in the following paragraphs but the ExA's proposed envelope represents an operating restriction that the Applicant

cannot agree to and which would undermine the entire purpose of the Project, which is to allow growth at the airport.

2.2.6 The Applicant therefore maintains its firm position that its currently submitted noise envelope requirement and proposals should stand instead of the ExA's proposed amendment.

ICAO's Global Trends 2022 paper does not support the ExA's proposal

2.2.7 The ExA's Reasons and Notes state:

The Applicant considered in its D8 submissions that the APF 7dB key fact reduction across the test points corresponds to 2.3 dB in terms of reduction in the affected communities.

2.2.8 The Applicant notes the ExA's agreement with this.

2.2.9 The ExA's Reasons and Notes state:

"*10% has been taken as corresponding to 0.5 dB using the CAA 'rule of thumb' 20% per 1 dB recognising that expressing the noise limit as an area above a noise level for the day and night metrics provides greater operational flexibility."*

2.2.10 The Applicant notes the use of the rule of thumb which gives reasonable approximations, although given the severe consequences of the limits for the airport's future business, limits should be based on valid modelling and not approximations. However, the arbitrary 0.5dB reduction every 5 years remains, with no justification except a misplaced reference to the ICAO Global Trends in Aircraft Noise (which for the avoidance of doubt does not give such a figure), is addressed below.

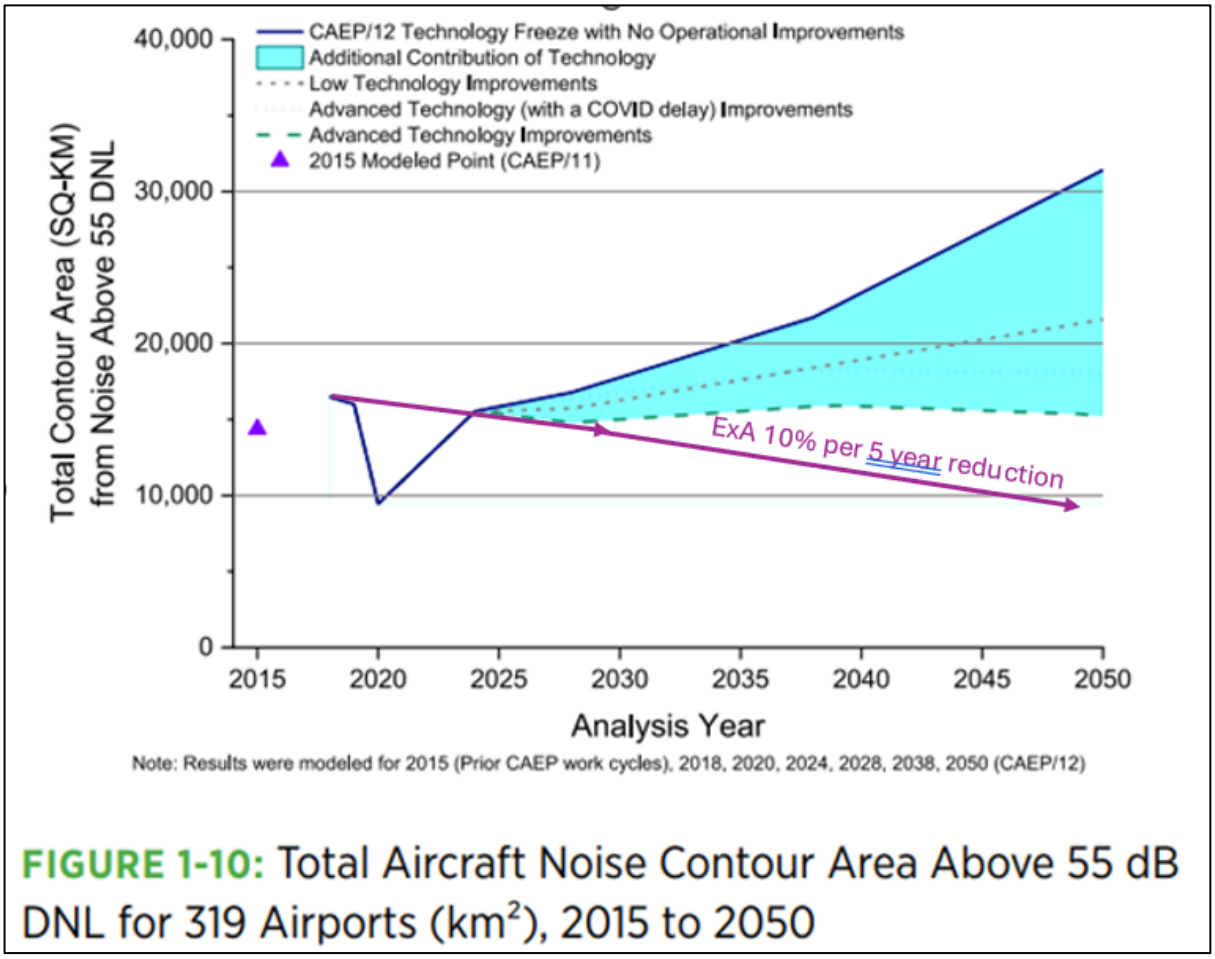
2.2.11 The ExA's Reasons and Notes state '*In the longer term, post commencement of dual runway operations the ExA has had regard for scenario 3 of ICAO's 'Global trends in Aircraft Noise' 'technology improvements of 0.2 EPNdB per annum for all aircraft entering the fleet from 2024 to 2050*.'

2.2.12 There are two main reasons why it is clear to the Applicant that the ICAO paper does not lead to the ExA's 10% reduction proposal.

2.2.13 Firstly, Figure 1.10 of the ICAO report shows Leq noise contour areas increasing, not decreasing. This figure is reproduced below showing the (day night level) noise contour area of the composite 319 airports growing under the various technology scenarios ICAO considered. On top of this in purple has been added the ExA's proposal to reduce contour areas by 10% from 1019 to 2029 and by a

further 10% every 5 years thereafter (we assume compound) i.e. to 62% of 2019 levels in 2049.

Figure 2.3 ICAO Global Trends In Aircraft Noise 2022 Figure 10.1



2.2.14 Clearly the ExA proposal heads in the opposite direction to that expected by ICAO in 2022. The ExA noise limit proposal is not supported by the ICAO global trends report and instead is directly at odds with it.

2.2.15 Whilst referring to the ICAO report, we note the ExA has adopted the same timescale, proposing fixed noise limits to 2049. There has been much discussion about how aircraft fleets will transition after the mid 2030s and the lack of any certainty beyond this. This lack of certainty is borne out in the ICAO figure by the huge range of possible outcomes in the global trend, yet the ExA suggests fixed noise limits through this whole period. Noise envelope policy and guidance requires noise envelopes to remain relevant, so noise limits over these long timescales must be subject to review, making the ExA proposal contrary to policy. Any requirement must also be reasonable.

2.2.16 Secondly, the downward trend of 0.2 EPN dB referred to in Scenario 3 of the ICAO report is for new aircraft coming into service. There is no direct linkage between the long-term trend of noise levels of new aircraft coming into service each year and Leq noise levels. The ICAO long term trend in new individual aircraft noise levels tells us that hypothetically, if the fleet at Gatwick were fully replaced every year, and if there was no growth and no change in any other aspect such as aircraft size, operating procedures etc, then Leq noise levels may reduce by 0.2dB each year, or about 1dB every 5 years. However, aircraft have life spans of 20-25 years, and the rate of fleet replacement is obviously not 100% a year, but around 4-5%. Thus, the benefit of new technology reducing Leq noise levels will gradually filter in depending on the rate of fleet transition.

2.2.17 The ExA and the Secretary of State will be aware that fleet transition has been a topic of debate during the examination. Whilst GAL does not wish to comment further on that debate here, it does note that no Interested Party, or indeed the ExA, has sought to advance a position that the rate of fleet transition that would be required to comply with the noise limit reductions proposed by the ExA is achievable, let alone likely. This highlights the illogical nature of the ExA's proposal.

2.2.18 The Applicant has studied the rate of fleet transition over the last several years in order to most accurately reflect the likely rate of fleet transition and hence the Leq noise benefit delivered specific to the Gatwick fleet of airlines. Since 2019 three rates of fleet transition have been developed. In 2019 the Central Case was developed, pre-COVID. In 2022 a Slower Transition Case was developed (mid COVID) to allow for the possible worst case delays due to COVID. In 2023 an Updated Central Case was developed reflecting the situation as the industry recovered from COVID. The Updated Central Case is now the Applicant's core case reflecting the most likely fleet transition. It was further explained in REP6-092.

2.2.19 The Applicant notes the ExA refers to ICAO Scenario 3 that ‘was meant to capture a COVID-19 delay, with no noise technology improvements for aircraft entering the fleet from 2019 to 2023,’ The ExA accordingly allows the 10 years from 2019 to 2029 for the first 0.5dB reduction (or 10% reduction which is slightly more), and then 5 years for the same reductions thereafter, thus accepting fleet renewal was delayed by COVID, and the Central Case is no longer valid. This analysis therefore relates only to the Updated Central case.

2.2.20 The results of ANCON noise modelling with the Updated Central Case for the future baseline and with Project forecasts are provided in the **ES Addendum -**

Updated Central Case Aircraft Fleet Report [REP4-004] updated in [REP8-012]). The two figures below show the predicted Leq 16 hr 51dB and Leq 8 hr night 45dB contour areas along with the corresponding two sets of noise envelope limit proposed by the ExA. The ExA proposed limits have been interpolated linearly between the 5 yearly 10% reductions from 2029 to 2047, to give the limits in the modelled years 2029, 2032, 2038 and 2047.

Figure 2.4 Leq 16 hr 51dB Contour Areas and the ExA Proposed Noise Envelope Limits

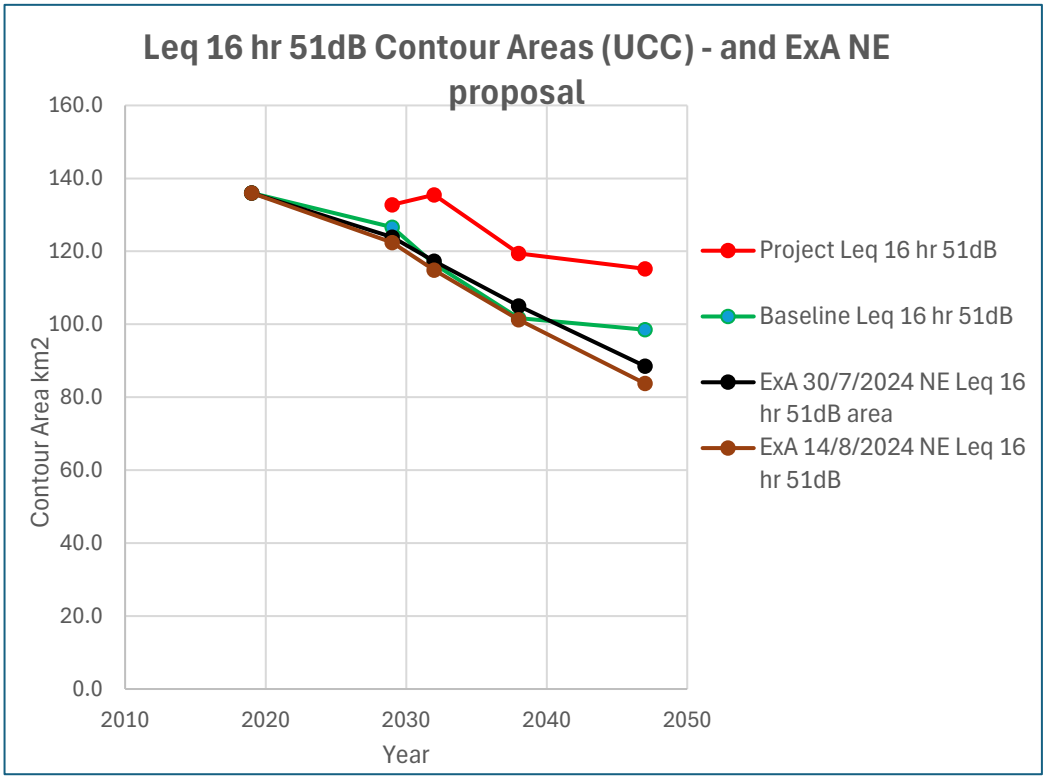
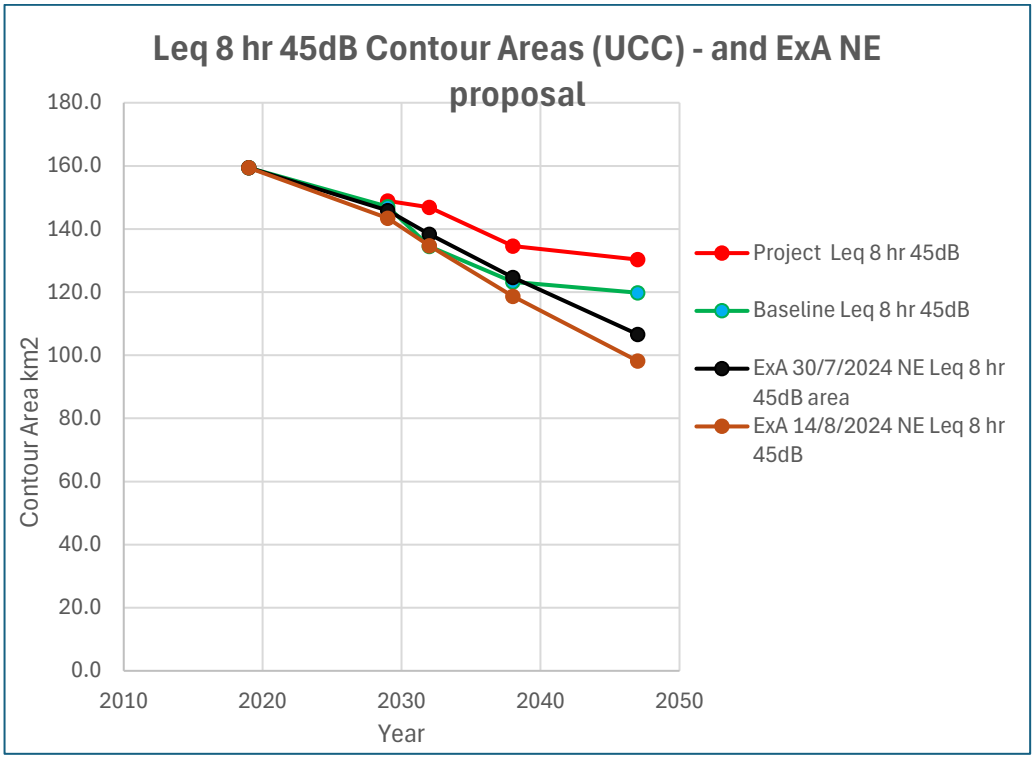


Figure 2.5 Leq 8 hr 45dB Night Contour Areas and the ExA Proposed Noise Envelope Limits



2.2.21 The graphs can be summarised as follows.

Daytime:

- 2029: The baseline does not meet the latest ExA proposed limits in 2029. This means the airport would have to reduce flights before the Northern Runway opened. The Project would exceed the limit by about 8%.
- 2032: The baseline does not meet the latest ExA proposed limits in 2032, by just 1%. The Project would exceed the limit by about 18%.
- 2038: The baseline meets the latest ExA proposed limits in 2038, exactly. The Project would exceed the limit by about 18%.
- 2047: The baseline does not meet the latest ExA proposed limits in 2047, by 18%. This means the airport would have to reduce flights substantially even without the Project. The Project would exceed the limit by about 38%.

Night-time:

- 2029: The baseline does not meet the latest ExA proposed limits in 2029. This means the airport would have to reduce flights before the Northern Runway opened. The Project would exceed the limit by about 4%.

- 2032: The baseline would meet the latest ExA proposed limits in 2032. The Project would exceed the limit by about 9%.
- 2038: The baseline does not meet the latest ExA proposed limits in 2038, by 4%. This means the airport would have to reduce flights even without the Project. The Project would exceed the limit by about 13%.
- 2047: The baseline does not meet the latest ExA proposed limits in 2047, by 22%. This means the airport would have to reduce flights substantially even without the Project. The Project would exceed the limit by about 33%.

2.2.22 Clearly, the noise reductions proposed by the ExA's (latest) proposed noise limits will not be met without large scale reductions in planned activity at Gatwick. This is the case in various future baseline years as well as in all years with the Project's forecast air traffic added. To guarantee to stay within the proposed noise limits would require a reduction in existing flight numbers at Gatwick below 2019 levels, which would make any expansion project impossible. The airport would have to progressively reduce the number of flights rather than increasing them.

2.2.23 At Deadline 8 the JLAs provided (**Legal Partnership Authorities, Deadline 8 Submission - Response to Actions raised by the ExA at Issue Specific Hearing 9 Appendix 1** [REP8-168]) some analysis of the then ExA noise envelope limits proposal (0.5dB per 5 years that is similar to 10% of area per 5 years). The Applicant has provided a response to this (**The Applicant's Response to Deadline 8 Submissions** (Doc Ref. 10.77)) but notes the following conclusions from the JLA's analysis:

Daytime: The updated central case with project is above the noise limits at all times so would not be workable in terms of their fleet transition rates.

Night-time: The updated central case with project would not comply.

2.2.24 The Sharing of the Benefits, calculated using the Bristol Airport case methodology as reported in [**ES Appendix 14.9.9 Report on Engagement on the Noise Envelope** [APP-179] can be summarised as follows for the years using 2032 and 2038 as examples years (clearly they would be more extreme in 2047):

Table 2.1 Sharing Benefits

	Daytime Benefit Share % to Community		Night Benefit Share % to Community	
	2032	2038	2032	2038
ExA Noise Envelope limits 14/8/2023	106%	101%	99%	113%
Applicant's Noise Envelope Limits	31%	58%	50%	69%

2.2.25 Policy on sharing the benefits between local communities and industry has been discussed in various submissions to the ExA and, whilst differences of opinions on interpretations exist, there is no interpretation that requires the airport to give 100% of the benefit to the community, or more than 100% which would require reducing flight numbers. The ExA's proposal provides no sharing and is counter to government policy.

2.2.26 The Applicant has reported the air noise impacts of the Project. They amount to significant adverse effects at approximately 80 properties. This is a relatively small noise impact. At no other airport expansion proposals (Heathrow R3, Luton Rising, Stansted, Bristol, Manston) has the decision maker considered it necessary or appropriate to impose restrictions of this nature. A substantial noise insulation scheme, which exceeds government policy requirements, has been proposed to mitigate not only these significantly affected properties but also approximately 4,000 properties which are subject to lesser effects. The ExA is proposing an unprecedented form of noise envelope that is entirely disproportionate to the level of noise impact from the Project.

2.2.27 The ExA gives the following Reasons and Notes:

Overall, it is intended to provide:

> *a clear expression of benefits sharing for all those likely to be adversely affected by aircraft noise;*
>
> *time for the Applicant to develop any necessary supporting processes and tools, including the conditioning of slots, the use of quota count budgets and quota count operational control; and*
>
> *an incentive for the airlines which they are able to respond to.*

2.2.28 The first of these points above is addressed in the earlier sections – namely that this does not provide for any benefits sharing with the Aviation Industry. With regards to the second point, the ExA's proposal is that between now and 2029 the Applicant develops "necessary supporting processes and tools" to achieve the required reduction. Whilst the Applicant can develop its Noise Envelope management tools (as described in ES Appendix 14.9.7 the Noise Envelope) within this timescale, it is a noise designated and slot coordinated airport subject to economic regulation by the CAA. It is not able to reduce flight numbers or introduce quotas arbitrarily, or retrospectively attach conditions to slots, or dictate with impunity increases in airport charges, and it would not be considered in any way reasonable for it to do so if it had these powers.

2.2.29 With regards to the third point, a measure is not an incentive if it cannot be achieved, or if to achieve it, would require unrealistic interventions in the operations of private businesses, including those not domiciled in the UK. The scenario of wholesale change in the fleet that would be required to achieve these limits has not been tested and no evidence has been provided by the ExA to suggest it is possible. As discussed before, aircraft typically have a lifespan of 20 to 25 years and airlines cannot simply replace them earlier without prohibitive cost and other implications. The supply of new aircraft is simply not there even if airlines could be somehow made to change fleets and the problems with supply of new aircraft from Boeing and Airbus post pandemic are very well documented. Airlines do not have the aircraft in use elsewhere to divert to Gatwick, even ignoring the detrimental effect that could have on the efficiency of their operations at other airports.

2.2.30 Further, taken to its logical conclusion, the focus on achieving the quietest fleet at Gatwick could have the contrary effect of increasing the proportion of noisy aircraft in fleets at other UK Airports which tend to have higher numbers of people overflown than Gatwick. Hence, at UK scale, the suggested intervention could have effects contrary to policy in that greater numbers of people experience noise at higher levels.

2.2.31 Requiring airlines to replace their fleets considerably faster than planned in order to meet new requirements at Gatwick, with the penalty that capacity will be reduced if they don't, has the character of an Operating Restriction as defined by Regulation 598/2014. Such restrictions are regarded as a last resort in the application of the ICAO Balanced Approach. Testing the justification for such an Operating Restriction at Gatwick would require the articulation of why it was necessary to meet a defined Noise Objective for the airport.

2.2.32 The Applicant consulted on its noise objective in the PEIR which refers to compliance with government policy, and interested parties affected by the restriction could refer to consultation materials to quantify what level of benefits sharing was proposed. The ExA has not articulated what its noise objective is. The Applicant notes, however, that it is not government policy to require airport development projects to share 100% or more of the benefit with the community, by reducing noise to similar or below future baseline levels for airport growth projects on their opening. The de-facto operating restriction on the baseline operation would be open to legal challenge with reference to Regulation 598. It would also take away the Applicant's ability to implement its DCO consent as granted, which was the reason given by the Stansted Inspectors not to impose a restrictive approach proposed in that case by the local authority.

2.2.33 The Applicant has looked carefully at the tools it can use to require quieter aircraft. As mentioned above applying restrictions on existing slots would come within the scope of slot allocation rules and Regulation 598/2014, but for the new slots released by the new northern runway capacity, there may be greater flexibility. The Applicant has looked at restricting new slots to be taken only by noise efficient aircraft so as to lock in the benefit of these quieter models. The fleet is already part transitioned (as noted on the ExA' *Reasons '… ERCD report 2002 which considered that 62%/65% of the day/night fleet had transitioned by 2019'*) and will have further transitioned in the further 10 years to opening at 2029, so the benefit of limiting new aircraft to noise efficient models will be greatly diluted by that time. Furthermore, the proportion of these new aircraft added to the baseline numbers (20% by day and 9% by night on the average summer day) will be small, again diluting the benefit in overall noise levels, that would equate to overall only a few percent of Leq contour areas by 2032. Whilst this is a useful benefit, and one the Applicant will aim to deliver, it will be nowhere near sufficient to meet the area reductions proposed by the ExA's noise limits that require reductions of up to 18% compared to the baseline in the 2032 to 2038 period and considerably more thereafter.

2.2.34 In summary, the Reasons and Notes given here make clear that the ExA's proposed noise limits presume the airlines operating at Gatwick can respond to reduce their noise output considerably to allow the airport to grow. The ExA has provided no evidence to support this presumption. The Applicant has studied closely trends within the aviation industry, including the fleets of airlines using the airport, their order books and issues facing production and supply within the aviation industry. This has allowed it to come to rational conclusions regarding the extent to which the full advantages of quieter aircraft can be taken at Gatwick, and this shows the ExA's presumption is not correct. The ExA's

expectation cannot be met and not by some considerably margin. This means the proposed noise envelope limits would be unworkable, and are not reasonable.

15.2 Noise Envelope Process

2.2.35 The ExA proposes three paragraphs (3,4, and 5) relating to administering the Noise Envelope.

(3) Before the commencement of dual runway operations, and annually thereafter, the undertaker shall have submitted to the independent air noise reviewer and have had approved by the independent air noise reviewer an operating plan ahead of the following summer operating season that shows that the noise limits set out in (1) and (2) shall be achieved.

2.2.36 The Applicant notes the ExA's reference to the Independent Air Noise Reviewer to fulfil the role, which will be the CAA.

2.2.37 The Applicant's Noise Envelope proposal sets out details of how the annual noise monitoring and forecasting will be carried out, that meet its proposed requirement. The Applicant's process already provides for this, but in a more structured manner, which has been carefully formulated and has been agreed following discussion with the CAA. Whilst the Applicant therefore accepts the principle of this proposal, it identifies that its process in Requirement 15 already provides for this in a more effective manner, and this wording will not be included in the draft DCO submitted by the Applicant at Deadline 9.

(4) As soon as reasonably practicable after the end of each summer operating season, after the commencement of dual runway operations, the undertaker shall publish their report to the independent air noise reviewer showing the calculated noise performance of the airport informed by actual noise measurements, compared with the noise limits set out in (1) and (2) with an explanation of any exceedances.

2.2.38 The Applicant's Noise Envelope proposal sets out details of how the annual noise monitor and forecasting will be carried out, that meet the aims of this requirement. The Applicant's proposals include noise modelling carried out by ERCD whose ANCON model is calibrated every year by measurements taken at Gatwick consistent with this requirement. As above, the Applicant's proposal, already provides for this, but in a more structured manner, which has been carefully formulated and has been agreed following discussion with the CAA. Whist the Applicant therefore accepts the principal of this proposal, it identifies that its process in Requirement 15 already provides for this in a more effective

manner, and this wording will not be included in the draft DCO submitted by the Applicant at Deadline 9.

(5) If, in consultation with the host authorities, the independent air noise reviewer considers that any exceedances reported in (4) are caused by factors within the control of the undertaker, the undertaker shall modify its approach to the development of its operating plan for the year after next to meet the noise limits set out in (1) and (2).

2.2.39 The Applicant's Noise Envelope proposal sets out details of how the independent air noise reviewer, the CAA, will consider the Applicant's Annual Monitoring and Forecasting Report and will determine whether there has been or whether it is not reasonably satisfied there has not been any actual or forecast exceedance. The CAA will determine this using their significant expertise and experience in the matter of air noise and aviation regulation. Moreover, the CAA is a public corporation of the Department for Transport, and as a public corporation there can be confidence that they will perform this role in line with their public interest duties, fairly and impartially. In those circumstances, it is not identified what benefit there would be of the CAA being required to consult with the host authorities on their determination of the matter. The host authorities are not competent in such matters, and for them to provide meaningful input to the determination it would be necessary for them to appoint consultants who are experienced in this matter. That would, in the Applicant's view, be an unnecessary use of resource, cost, and would inevitably be likely to slow decision making in circumstances where timely decisions would be needed to influence the Airport's future behaviour. It is with this need for timely action to ensure public confidence that the Applicant has explored and committed to the limits of what is practicable to achieve for reporting actual and forecast noise contours for the airport, and it would be wholly inappropriate to potentially undermine this for the purpose of requiring the CAA to consult on their decision with a body, or collection of bodies, with significantly less experience and expertise on the matter. Accordingly, the Applicant does not agree that it is necessary or reasonable to impose this addition to the process, and the Applicant does not agree to this.

2.3 Requirement 18 Noise Insulation Scheme

2.3.1 The Applicant has proposed a Noise Insulation Scheme (NIS) that is policy complaint and goes beyond. It lays out what measures are to be provided within an Inner Zone set at SOAEL and within an Outer Zone which is sub-divided in to three with maximum budgets for each. It also lays out procedures to be followed

to ensure the scheme is accessible and implemented to a suitable programme. The Applicant's responses to the ExA's proposed requirements for the Noise Insulation Scheme assume this scheme is adopted. The Applicant's comments on the ExA's proposed changed to the Requirements Interpretations, given above, are relevant.

2.3.2 The ExAs proposed Requirement states:

Receptor based mitigation

(1) Within not more than 3 months following the commencement of any of Work Nos. 1 – 7 (inclusive) the undertaker shall submit for approval by the relevant local planning authority a list of premises forecast to be eligible premises at the commencement of dual runway operations.

2.3.3 The Applicant's NIS commits as follows: 'Within three months following the commencement of any of Work Nos. 1 – 7 comprised in the Project GAL will submit to each relevant planning authority details of how the noise insulation scheme is to be promoted and administered'.

2.3.4 The eligibility criteria for the NIS are clear. Paragraph 4.3.1 of the NIS has been updated as follows: 'The interactive map will allow property owners to zoom in to check if their property is eligible, i.e. if any part of their property or land ownership on which the property lies, falls within the Inner Zone or Outer Zone noise insulation scheme boundary'. This will ensure no ambiguity, and the Applicant sees no additional contribution from the planning authority will be needed. The Applicant will share the list of eligible properties with planning authority, as suggested, but not for approval.

2.3.5 The ExAs proposed Requirement states:

(2) *Within not more than 6 months following the commencement of any of Work Nos. 1 – 7 (inclusive) the undertaker must take appropriate steps, having consulted with the relevant local planning authority, to notify the owners and occupiers of all premises on the approved list (1) that the premises has been approved for the design and installation of a package of measures that may include ventilation, noise insulation and methods to reduce solar gain to achieve an internal noise environment consistent with guidance.*

2.3.6 The programme requirement to notify within 6 months is consistent with the proposed NIS.

2.3.7 The Applicant's proposed noise insulation measures and their performance is given in the NIS.

2.3.8 The Applicant's approach to reducing overheating is given in the NIS. It provides for thermal insulation to loft spaces, blinds and acoustic ventilators to provide at least 170 m3/h of fresh air which would allow for at least two air changes per hour for the vast majority of rooms treated. This will ensure that overheating does not arise in most homes in all but the more extreme weather conditions.

2.3.9 Further methods of reducing solar gain (as listed in the Requirement) have been considered and discussed with the Local Planning Authorities. External shading was discussed. The Applicant considers that this is not a practical solution for domestic buildings . Following the Noise Topic Working Group on July 18th 2024 the Applicant also discussed solar reflective glass with a glazing supplier who explained that this type of glass can be effective at reflecting solar light and heat away from the building but it is tinted to some extent. This creates issues with transparency and reflections that may be acceptable on commercial buildings but in a domestic situation many homeowners would not want this. Blinds are included to be used in summer to reduce solar gain where necessary. The Applicant therefore has not proposed external shades or solar reflective glass in the NIS, and considers the measures included in the NIS to address overheating are appropriate.

2.3.10 The ExAs proposed Requirements state:

(3) Within not more than 12 months following the commencement of any of Work Nos. 1 – 7 (inclusive) the undertaker must, subject to access being granted to the premises, carry out a survey of all the premises on the approved list and submit, for approval by the relevant local planning authority, proposed designs for all premises on the approved list.

2.3.11 There are up to 3,900 homes to survey. This is not feasible within the time available following preparation of the eligibility list, based on the ExA proposal. The Applicant would expect the surveys to be done by the contractor in the Outer Zone as part of pricing the works. The Applicant has laid out a programme in the NIS submitted at Deadline 8 that it is confident is achievable following further consultation with local authorities who have welcomed it.

2.3.12 The Applicant had laid out details of the measures to be provided in the NIS, and cannot accept the need for local authority approval that would inevitably frustrate the programme and add costs to the local authorities. Instead, the measures can be provided cost effectively and to the programme as prescribed in the NIS.

2.3.13 The ExAs proposed Requirements state:

(4) The designs submitted by the undertaker and the consideration of them by the relevant local planning authority must have due regard for guidance including Sound Insulation and Noise Reduction for Buildings BS 8233 British Standards Institution (2014), Methods for rating and assessing industrial and commercial sound BS 4142 British Standards Institution (2014), Acoustic design of schools: performance standards BB93 Department for Education (2015) and Acoustics—Technical Design Manual 4032 Department for Health (2011) as relevant.

2.3.14 The Applicant notes these standards are relevant to new housing being designed to address potential noise intrusion and have limited relevance to existing housing. Planning and Noise; Professional Practice Guidance on Planning and Noise, New Residential Development, 2017 would also be relevant to this extent. The Applicant has expressed in ISH9 that the Applicant cannot commit to fixed internal noise levels because there may be acoustic weaknesses in the building that cannot realistically be fixed by the NIS with the stated budgets. This list of standards has been added to the NIS.

2.3.15 The ExAs proposed Requirements state:

(5) If the relevant planning authority does not approve the receptor based mitigation design for a permanent residence on the approved list because it considers internal living conditions would be unacceptable, the undertaker shall offer the owner of the premises home relocation, which shall include the open market value of the premises and reasonable moving expenses, fees and costs.

2.3.16 For the reasons given above the Applicant does not accept that the local authority should approve the mitigation design.

2.3.17 The Applicant has provided a Home Relocation Assistance Scheme within the NIS set at a level of Leq 16 hr 66dB. This is a high level of noise, at which it is appropriate to offer relocation assistance. The ExA proposal has no noise limit, except Leq 16 hr 54dB and Leq 8 hr 48dB as stated in the Eligibility section. These are noise levels entirely acceptable for the majority of the population. For example, the National Noise Incidence Study 2000 found that 55±3% of the population of England and Wales live in dwellings exposed to day-time noise levels above 55 dB LAeq,day. The proposal to offer relocation above Leq 16 hr 54dB and Leq 8 hr 48dB is not appropriate, necessary or backed by any guidance or precedent and is not accepted by the Applicant.

2.3.18 The ExAs proposed Requirements state:

(6) Subject to agreement by the owner of the premises and access being granted to the premises, the design approved by the relevant local planning authority shall be installed and commissioned before the commencement of dual runway operations.

2.3.19 The Examining Authority's proposed programme requires all noise insulation to be installed before opening. The Applicant believes it would not be possible to deliver the entire scheme of approximately 4,000 homes before opening, let alone necessary, but at Deadline 8 has committed to delivering the Inner Zone (approximately 400 homes) and Outer Zone 1 (approximately 100 Properties) in this period. The Applicant's forecasts show noise levels will increase after opening to peak approximately 3 years later. The NIS Outer Zone covers areas that are not significantly affected by aircraft noise due to the Project, so there is no policy requirement for this noise insulation and hence no programme requirement, and it is not needed before opening. Instead, the Applicant has now committed to delivering Outer Zones 2 and 3 in two phases within two and three years of opening respectively, ie before the highest noise levels arise.