Technical Note

Project:	M1 Luton Airport DCO
Stage:	Deadline 6 (8 December 2023)
Subject:	National Highways position on the TRIMMA and the Green Controlled Growth Framework
On Behalf of:	National Highways

1. Introduction

At ISH4 (Traffic and Transport) on Thursday, 28 September, National Highways and the Applicant were asked to agree an appropriate resolution to membership of the Environmental Scrutiny Group (ESG). Following a constructive meeting with the Applicant, where the role of the ESG within the Green Controlled Growth (GCG) Framework was explained in more detail, National Highways indicated at Deadline 5 (14 November) that it was satisfied with membership of the Technical Group that sits below ESG subject to further substantive detail being provided in relation to the TRIMMA. National Highways indicated that it would keep this position under review.

Further details about the way that GCG would be implemented were outlined at ISH 8 (30th November 2023). Consequently, National Highways' position is that membership of the ESG will be required to protect the safety of the Strategic Road Network (SRN) in in accordance with its statutory duties under the Licence. This is because the assumptions underpinning GCG, the TRIMMA and the mitigation secured in relation to the proposed development are all interrelated. National Highways has not been given sufficient confidence by the Applicant about precisely where the mechanism for securing mitigation is contained, who the decision makers are, how the mitigation is to be funded and how further development of the airport will be constrained until mitigation is provided.

Typically, this would be contained in a single application document. However we understand that the Applicant is providing for different types of mitigation across the GCG framework contained in the DCO and also the TRIMMA (and potentially other documents). This increases risk, not only of mitigation being unsecured and/or unfunded, but of the assumptions underpinning the mitigation identified at this stage being unfounded.

Furthermore, National Highways is concerned that there is insufficient detail contained within the outline TRIMMA provided at deadline 4 to give sufficient assurance that the monitoring regime will be sufficiently robust and that the thresholds at which mitigation is intended to be delivered are at a satisfactory level of detail and confidence. Detailed matters relating to the TRIMMA are proposed to be determined following approval of the DCO, which means that they will not be secured by the DCO, creating uncertainty and risk for National Highways.

Note also that Requirement 29(2) of the DCO requires that before any airport growth beyond the LLAOL permission, the TRIMMA is approved by the relevant planning authority in a form that is substantially in accordance with the outline TRIMMA. As has already been explained, the outline TRIMMA is not sufficiently detailed to give National Highways the assurance that mitigation and monitoring outcomes are robust, adding further confusion as to the enforceability of the TRIMMA once approved. This is because given the outline nature of the TRIMMA (no thresholds are specified even in outline at this stage), the scope for a different document to emerge which could still be asserted to be "substantially in accordance with the outline TRIMMA."

National Highways' position on GCG and the TRIMMA is explained in this Technical Note.

2. Green Controlled Growth (GCG)

2.1 Implementation of GCG

GCG will place controls on four key categories of environmental effect: air quality, greenhouse gas emissions, aircraft noise, and surface access.

The governance of the GCG will be undertaken by an ESG with a Technical Panel providing support. The ESG will have the powers to approve or refuse Level 2 Plans or Mitigation Plans put forward by the airport operator if any GCG environmental effect has exceeded a Level 2 Threshold or Limit respectively. The GCG also has the powers to approve or refuse applications by the airport operator to modify timescales within the GCG process, or Level 1 Thresholds, Level 2 Thresholds or Limits. There are provisions which address what takes place in default of a decision or in the event of a refusal – and how appeals are handled. Hence, none of these are specified with certainty at this stage – all could change.

A Level 1 threshold is a defined level of environmental effect, below the Limit and Level 2 Threshold, which triggers additional requirements for the airport operator, to avoid a future exceedance of a Limit. For surface access, the GCG Framework includes two surface access limits to control changes in mode share. The two mode share limits include maximum percentage mode shares for 'non-sustainable' passenger travel and 'non-sustainable' staff travel, which must not be exceeded.

2.2 Implications of GCG for National Highways

At present, the Applicant proposes that National Highways should be a member of the Technical Panel to provide support in interpreting monitoring outputs and determining the suitability and effectiveness of Level 2 Plans and Mitigation Plans put forward by the airport operator.

However, the achievement of specific staff and passenger mode share targets is critical to the safe operation of the SRN. This is because the need for mitigation is assumed based upon particular traffic modelling, which relies upon input assumptions which logically will include mode share. If the mode share for sustainable transport is not achieved, there will be a consequential adverse impact on the SRN. Therefore, the decisions being made by the ESG on the efficacy and appropriateness of interventions and their timing will have a material impact on the operation of the SRN. For example, a scenario might occur where there are two mitigation options for sustainable transport when mode share targets are not achieved, such as additional capacity/frequency of the rail services or the provision of increased bus services. The former, increasing rail services is more likely to result in a reduction in traffic on the SRN as rail journeys are typically associated with longer distance travel. In comparison, improvements to bus services are more likely to reduce congestion on the local road network.

It can be seen that the decisions taken by the ESG will have a material impact on the operation of the SRN and on National Highways' responsibilities under its licence to provide a safe network. Therefore, it is essential that National Highways has the ability to influence these decisions as a member of the ESG, not just at the level of the Technical Panel, where its input will be greatly diluted.

The precise terms of reference of the ESG have not been agreed, so it is not clear how the voting system works between the various ESG decision makers in respect of matters within and outside of their function. For example, will the local authority members of the ESG have the ability to override National Highways' concerns with respect to matters that directly impact the SRN? ho is responsible for funding the matters that the ESG decides upon and what happens if there is a shortfall?

The drafting that is included in the DCO which governs the ESG does not provide sufficient detail and includes a number of provisions that directly hamper the effectiveness of the ESG as a body responsible for managing the impacts of airport growth on key environmental disciplines. For example, if a mitigation plan is not approved by the ESG within 21 days it is deemed approved by the ESG – meaning that the Applicant's proposals for mitigation cannot be effectively considered if technical consultation is required.

It is critical that greater detail and greater certainty on how the ESG operates and National Highways' role within the ESG is given by the Applicant and that National Highways is satisfied as to the potential solutions in order to avoid the potential for serious detriment to the SRN. This information is also required by the ExA in order to report fully to the Secretary of State on the impacts of the project on critical infrastructure.

3. Outline Transport Related Impacts Monitoring and Mitigation Approach (TRIMMA)

3.1 Implementation of the TRIMMA

The TRIMMA that was submitted by the applicant at deadline 4 is an outline document. The TRIMMA sets out the Applicant's approach to monitoring and mitigating impacts on the highway network as a result of the Proposed Development. It is proposed as an agile mechanism for addressing traffic-related uncertainty, enabling the Applicant and the airport operator to implement mitigation on the highway network at the appropriate time. The TRIMMA will therefore determine the timescales for the implementation of the proposed mitigation works included in the DCO for M1 Junction 10. It will also determine any residual mitigation, which would be funded via the Residual Impact Fund (RIF), that becomes necessary following monitoring of the actual conditions, beyond the mitigation included in the DCO as Scheduled Works.

3.2 Implications of the TRIMMA for National Highways

National Highways has a number of concerns in relation to the proposed contents of the TRIMMA, which it has raised in discussion with the Applicant as well as formally through the Examination. It is important to National Highways as the physical mitigation actually proposed by the Applicant is supposed to be delivered under the terms of the TRIMMA, meaning that there is a specific concern that it should be effective in delivering the mitigation in question.

3.2.1 Monitoring Proposals

National Highways considers that the Applicant's proposal to pause monitoring if the airport is not growing (Section 3.2), is a flawed approach. Even if the mppa throughput at the airport does not increase, there is still a requirement to monitor the impact of the airport in case there is a modal shift over time which would trigger the need for additional mitigation. Similarly, a change in the traffic on the SRN and its relationship with airport traffic may result in a need for mitigation so that even a constant level of airport throughput needs to be managed.

There are three levels of monitoring proposed. ML0 is the baseline monitoring and will establish the updated baseline against which traffic volumes will be compared. Total trips starting and/or ending at airport sites will be counted yearly, using data collected from existing data sources within the airport (ML1 and ML2). When the thresholds are met, ML3 will be triggered at which point further detailed monitoring and mitigation will be put into place.

M1 Junction 10 is congested in the baseline and will be sensitive to any future additional traffic, which is likely to result in significant congestion issues at this key location on the SRN. The TRIMMA indicates that annual monitoring (ML1 and ML2) will take place at specific locations only if it exceeds ML0 thresholds. This means that in order for additional monitoring to take place at the desired levels to achieve the Applicant's threshold for further mitigation, the baseline position will be over capacity and

the problem for National Highways will have crystallised long before any proposed solution is put in place to respond to it. Given National Highways' concerns about capacity at this junction and its lack of resilience, it is expected that continuous monitoring throughout the year should take place, whether or not ML0 (any difference from the baseline) is triggered.

Figure 3.4 in the TRIMMA shows the locations that the traffic monitoring is proposed to be undertaken. For M1 Junction 10, one location is proposed on the A1081. Based on this location it is unclear how the Applicant will monitor the capacity constraints and consequences of traffic growth at Junction 10 as it will not be possible to determine the movements using each slip/the circulatory carriageway etc to determine when capacity has been reached at the junction. National Highways' view is that more detail concerning the junction performance, for example turning flows, is required, given the complexity of movements and potential patterns of congestion at the junction.

The TRIMMA provides that a spreadsheet tool (Section 3.3.8) will assign the airport traffic to the public highway network, based on the distribution derived from the ANPR (or similar) survey located on the A1081. It is unclear how the Applicant will be able to obtain distributional data for M1 Junction 10 based on the location of on camera on the A1081. This severely constrains the ability to understand the impacts on Junction 10 and the SRN and, hence, to deploy mitigation. To be acceptable, the TRIMMA would need to be amended to address this.

A two-week survey conducted during a neutral month is currently proposed. The survey is proposed to be repeated every five years, so that the distribution of airport-related trips can be updated. Carrying out surveys for two weeks in a neutral month poses a significant risk to the usefulness of data collection. In practice, much richer data are required if survey data is to be relied upon. There can be significant fluctuations in traffic levels week by week (train strikes, broken ATC loops/ANPR cameras/weather conditions/road closures etc). Therefore, National Highway are seeking continuous monitoring of the M1 Junction 10, to provide an accurate picture of traffic movements related to airport demand throughout the year and provide details around when the mitigation is required.

Given the congested nature of M1 Junction 10, it is not clear to National Highways how the applicant will use the ANPR data to determine when each phase of the mitigation for the M1 has been triggered. Traffic volumes alone will be insufficient to confirm whether the capacity has been exceeded and whether the junction performance has deteriorated. National Highways consider that further data on queue lengths and the capacity of each lane on each arm of the junction will be required to determine when each phase of mitigation will be required. Without this, the TRIMMA is not adequate for its purpose.

3.2.2 Monitoring Analysis

National Highways has considered the data already available and supporting the application as well as justifying the use of the TRIMMA.

It is indicated in the outline TRIMMA (paragraph 3.3.9) that any difference between the current (2016) 'baseline data and the non-airport traffic' will be analysed. However, National Highways considers that a justification is needed as to why the latest survey data available post covid should be used as the comparison as opposed to the 2016 data.

Airport sites do not include third party off-site car parking facilities because the traffic associated with these (aside from any vehicles travelling between these facilities and the airport terminal, such as shuttle buses) are outside the airport's control (Section 3.4). Whilst it is noted that it is outside the Applicant's control, this mode share has the potential to materially affect the overall mode shares that have been forecast and could have significant impact on the highway network. National Highways

therefore considers that such movements should be included in the monitoring to verify that the forecasts are accurate in terms of the mode shares to the airport.

3.2.3 Residual Impact Fund (RIF) Governance

The Residual Impact Fund proposed in the outline TRIMMA is a finite fund for the mitigation of residual airport-related traffic impacts. This fund will be secured in the section 106 agreement, although National Highways notes that no draft of the section 106 Agreement, which is critical to this part of the TRIMMA has been made available for consideration by participants in the examination. National Highways' concern in relation to the RIF is in relation to the process of allocating the fund.

National Highways requires further clarification about how the RIF will operate in practice and be allocated (Section 4.1). The RIF will be a finite fund for the mitigation of residual airport-related traffic impacts, but it is unclear how this fund will be allocated. As the fund is finite, it is not clear what would happen: if further mitigation was required for any additional link or junction that had not previously been identified; what would occur if the anticipated cost of any mitigation exceeded the budgeted expenditure under the fund or if a cost overrun occurred in relation to any element and this required even a little more than anticipated in terms of a financial contribution. It is not clear how this would be managed if mitigation used up a higher proportion of the fund and left limited funding available for mitigation at other times or locations. Particularly where funding decisions are made on a voting basis, each stakeholder will have their own priorities and such that the RIF could result in an unbalanced allocation of funding, with insufficient available to meet all needs and in particular the need for mitigation on the SRN.

National Highways is concerned that any voting system to determine funding priorities could undermine its ability to secure mitigation for the SRN, when the number of local authorities, which may reasonably seek different competing solutions, are collectively greater in number.

3.3 National Highways Position on the TRIMMA

Overall, National Highways is concerned that there is not enough detail provided within the TRIMMA to enable the Applicant and key stakeholders such as National Highways to accurately monitor and determine when the thresholds for mitigation are triggered at the M1 Junction 10 and the local road network.

This is particularly important for M1 Junction 10 as the impacts on the SRN have so far been associated with the delivery of particular phases of the proposed development. At present, the working hypothesis is that mitigation should be provided in phases, when particular levels of Airport demand are reached, but this is not necessarily associated with the years modelled which are stated to be indicative. The current draft of the DCO before the ExA (REP5-003) does not provide for the Applicant to submit a phasing plan for approval by the relevant planning authority or to deliver any works by reference to phases. National Highways is particularly concerned that if phasing is not secured in the DCO, it will be very difficult to understand precisely when mitigation thresholds have been reached.

National Highways remains concerned about the robustness of the outline TRIMMA in respect of monitoring and measuring critical airport-related traffic flows at M1 Junction 10. The submitted TRIMMA is in outline form only and set out the Applicants proposed traffic monitoring regime and is a stand-alone document which will be secured by the DCO. However, a more detailed TRIMMA with specific thresholds triggering the implementation and mitigation works is intended to be developed following approval of the DCO. The provision of a detailed TRIMMA outside of the DCO process does not provide National Highways with sufficient assurance that the monitoring regime will be sufficiently robust and that the thresholds to trigger each intervention will be at a satisfactory level.

4. National Highways Requirements

As set out above, National Highways has concerns about the implementation of both the GCG and the TRIMMA. Further, it is not clear to National Highways how the two regimes, which are interrelated, are connected.

At present, the Applicant proposes that National Highways are represented only on the GCG Technical Panel, which is not a decision-making body and in relation to the TRIMMA. However, achievement of sustainable mode share targets in relation to GCG is critical to the traffic throughput at M1 Junction 10. Under the current proposals, National Highways would have no control over the decisions being made on efficacy and appropriateness of interventions and their timing, which will have a material impact on the SRN. It is essential that National Highways has the ability to influence these decisions as a full member of the ESG.

National Highways is also concerned that there is not insufficient detail provided within the outline TRIMMA. The absence of a more detailed and specific proposal within the DCO process leaves National Highways with insufficient assurance that the monitoring regime will be sufficiently robust and that the thresholds will be set at a satisfactory level. This constrains National Highways' responsibilities under its Licence.

Therefore, National Highways is seeking the following solutions be included as part of the proposed development and secured via the DCO and/or agreement with the Applicant:

(a) Membership on the decision making panel of the ESG and confirmation of the terms of reference Where sufficient clarity cannot be provided, legally enforceable commitments as to the weight to be given to National Highways' view on matters concerning surface access;

(b) The full detailed TRIMMA provided in advance of the close of examination;

(c) Grampian requirements as set out in the amended version of the DCO submitted alongside this note (see requirements 34-36 in Part 4 of Schedule 2);

In the absence of this, National Highways will be obliged to maintain its objection at close of examination and make representations to the Secretary of State on the impacts to the SRN and in particular requesting a bespoke monitoring and mitigation solution outwith the GCG and TRIMMA. National Highways would like to stress that it is willing to discuss all alternative approaches with the Applicant to assist them to provide the necessary comfort and assurance on the various matters contained herein.