



Gatwick Airport Northern Runway Project

Written Summary of Oral Submissions from Issue Specific
Hearing 2: Control Documents / DCO

Book 10

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1 Introduction

- 1.1.1 This document contains Gatwick Airport Limited's (the "**Applicant**") summary of oral evidence and post hearing comments on submissions made at Issue Specific Hearing 2 ("**ISH 2**") held on 1 March 2024. Where the comment is a post-hearing comment submitted by the Applicant, this is indicated. The Applicant has separately submitted at Deadline 1 (Doc Ref. 10.9.3) its response to the Examining Authority's ("**ExA**") action points arising from ISH 2, which were published on 5 March 2024 [\[EV7-005\]](#).
- 1.1.2 This document uses the headings for each item in the agenda published for ISH 2 by the ExA on 30 January 2024 [\[EV2-001\]](#).
- 1.1.3 The Applicant, which is promoting the Gatwick Airport Northern Runway Project (the "**Project**") was represented at ISH 2 by Scott Lyness KC, who introduced the following persons to the ExA:
- Tim Norwood, Chief Planning Officer, Gatwick Airport Limited;
 - Andy Sinclair, Head of Noise and Airspace Strategy, Gatwick Airport Limited;
 - Alison Addy, Head of External Engagement and Policy, Gatwick Airport Limited;
 - Catherine Howard, Partner, Herbert Smith Freehills LLP; and
 - John Rhodes OBE, Senior Director, Quod.

2 Agenda Items 1 and 2: Welcome, introductions and arrangements for the Hearing; Purpose of the Hearing

- 2.1.1 The Applicant did not make any submissions under these agenda items.

3 Agenda Item 3: Future Airport operations

- 3.1. The Applicant will be asked about its approach to land use/ planning controls over future airport operations and how these relate to existing controls over the use of the airport.
- 3.1.1 The ExA asked the Applicant if there are currently planning or other controls over the existing use of the airport that would govern its growth from 46.6 mppa to 67.2 mppa in the absence of the proposed development.
- 3.1.2 The Applicant drew the ExA's attention to its submission on controls over the existing use of the airport submitted as a response to the Procedural Decision

issued on 1 December 2023 [[AS-115](#)]. The main current control is the planning permission [**Post-Hearing Note**: dated 18 July 1979 with reference CR/125/79] for the northern runway, which states that the northern runway cannot be used alongside the main runway and can only be used when the main runway is temporarily non-operational. Beyond that, there are no planning controls on the growth of the airport, including regarding numbers of flights or hours of operation.

- 3.1.3 The ExA noted that the application forecasts that there could be 80.2 mppa by 2047 with the proposed development and asked whether that figure should be referenced in the DCO.
- 3.1.4 The Applicant explained that the appropriate means of controlling growth is through the air transport movement ("**ATM**") cap in requirement 19(1) in Schedule 2 to the **Draft Development Consent Order** (Doc Ref. 2.1 v5) ("**draft DCO**"), which provides that *"from the date of commencement of dual runway operations, the airport may not be used for more than 386,000 commercial air transport movements per annum"*. The Applicant explained that this control is the basis upon which the scheme has been assessed.
- 3.1.5 The ExA noted that other airport consents provide for a passenger cap and asked why such a control is not proposed for the Project.
- 3.1.6 The Applicant explained that a passenger cap is not considered necessary in the circumstances of this application. With the mitigation proposed as part of the Project, there are no forecast significant adverse effects on transport or air quality from the proposed development, which are the matters most sensitive to passenger throughput. Surface access impacts are proposed to be mitigated through the **Surface Access Commitments** [[APP-090](#)] ("**SACs**") (secured by requirement 20 in Schedule 2 to the draft DCO). It is disproportionate and unnecessary to implement a passenger cap in addition to an ATM cap in these circumstances.
- 3.1.7 The ExA noted that there were 285,000 ATMs in 2019 and queried whether there are existing controls through planning permissions or legal agreements which limit the number of ATMs going forwards.
- 3.1.8 The Applicant confirmed that there are currently no such controls and the main constraint on the airport's growth is its operational capacity, which is the reason for the DCO application. There are practical factors (as detailed by the Applicant in ISH 1: The Case for the Proposed Development) which influence how the airport can grow, but there are no formal controls in planning permissions or section 106 agreements.

- 3.1.9 The ExA queried whether, if aircraft continue to increase in size, the ATM cap could lead to more passengers than the anticipated 80.2 mppa in 2047 and result in greater impacts on transport, etc.
- 3.1.10 The Applicant confirmed that its Environmental Statement ("ES") is based on ATM forecasts that consider the anticipated rate of aircraft fleet transition, and the passenger volume that would result so providing a realistic worst case to inform the assessment.
- 3.1.11 **[Post-Hearing Note:** The Applicant also notes that the SACs include a fund (Commitment 14 - the Transport Mitigation Fund) to provide any necessary mitigation for an unforeseen or unintended impact from the Project, which will be secured under the s106 Agreement.]
- 3.1.12 The ExA noted that requirement 19(1) in Schedule 2 to the draft DCO imposes a cap of 386,000 commercial ATMs per annum and queried whether this should also limit non-commercial ATMs.
- 3.1.13 **[Post-Hearing Note:** the Applicant has responded to this query in its separate responses to the ExA's action points arising from ISH 2 (Doc Ref. 10.9.3), in response to **Action Point 1.**]
- 3.1.14 The ExA queried whether the Applicant is aware of planning permissions or legal agreements at other airports that tie together an ATM cap and passenger cap or whether there is usually one or the other.
- 3.1.15 **[Post-Hearing Note:** There is not a common or standard approach to the application of passenger and / or ATM limits for UK airports. By way of reference:
- Gatwick Airport, Exeter Airport, Liverpool Airport, Newcastle Airport and Norwich Airport are not subject to either a passenger or ATM limit;
 - Luton Airport as it stands (without its DCO Project) is subject to a passenger limit (and not an ATM limit);
 - Birmingham Airport and Heathrow Airport are subject to an ATM limit (and not a passenger limit); and
 - Bristol Airport, Stansted Airport and Belfast Airport are subject to both a passenger and ATM limit.]
- 3.1.16 The ExA queried whether there are night flight restrictions on the airport and, if so, how these are monitored and what the concept of night flights encompasses.
- 3.1.17 The Applicant explained that London Gatwick Airport is one of three London airports whose night flights (flights between 23:30 – 06:00) are regulated by the Department for Transport ("**DfT**"). The airport is subject to a movement limit

based on the number of aircraft movements and a noise quota based on aircraft noise, each of which is set separately for the summer and winter seasons. In the current period the movement limit is 11,200 for the summer season and 3,250 for the winter season. The Applicant must report movement and quota figures to the DfT and the DfT allows dispensations in certain situations. The current regime runs to October 2025 and the DfT is currently consulting on a continuation of the regime to October 2028 with the existing limits.

- 3.1.18 The ExA queried what dates constitute the summer and winter seasons.
- 3.1.19 **[Post-Hearing Note:** the summer season begins in the morning of the last Sunday in March and ends in the morning of the last Sunday in October. The summer season therefore varies in length from year to year and may be 30 or 31 weeks in length. The regime therefore allows a limited amount of the movement limit and/or noise quota to be carried over from one season to the next.]
- 3.1.20 The ExA queried what the DfT does if dispensations are required, whether there are sanctions for exceeding the limits and how many dispensations occur each year.
- 3.1.21 The Applicant explained that the regime is administered by the DfT. Each week the Applicant supplies a report on dispensations to the DfT with a reason for each dispensation. There were a particularly high number of dispensations in the latest summer season due to the unusual circumstances including airspace restrictions across Europe and the war in Ukraine.
- 3.1.22 **[Post-Hearing Note:** the Applicant has provided further information in relation to this query in its separate responses to the ExA's action points arising from ISH 2 (Doc Ref. 10.9.3), in response to **Action Point 2.**]
- 3.1.23 The ExA queried whether, if the airport grows to 67 mppa without the Project, there would be an increase in night flights.
- 3.1.24 The Applicant confirmed that the Project is being taken forward on the basis of the existing core night flight regime and noted that the current DfT consultation on the regime does not seek to change the current controls. The Project would not require a change to the level of night flights considered appropriate by government. The Applicant explained that many of the initiatives comprising the Project are intended to enhance the resilience of the airport and the Applicant would expect these to lead to a reduction in dispensations.
- 3.1.25 **[Post-Hearing Note:** without the Project, it is anticipated that the existing night flight regime would continue in operation and the Applicant's earlier comments regarding the DfT's current consultation on continuing this regime until October

2028 are reiterated. Any growth in passenger numbers would need to take place in accordance with the airport's regulatory controls, including the night flight restrictions.]

- 3.1.26 The ExA queried whether the controls on night flights are administered by the CAA or the DfT.
- 3.1.27 The Applicant confirmed that the night flight restrictions are a DfT scheme, overseen by the DfT and implemented by the Applicant. The Applicant noted that there are a range of other noise schemes and limits to manage, mitigate and control noise impacts, which are under the control of the DfT or the CAA.
- 3.1.28 **[Post-Hearing Note:** item 6 of the Applicant's response to the Procedural Decision issued on 1 December 2023 [\[AS-115\]](#) summarises the existing noise controls for Gatwick Airport.]
- 3.1.29 The JLAs suggested that, whilst they accept that there are no planning conditions or section 106 planning obligations that impose a numerical control on ATMs or passengers, there are indirect controls, including the restriction on the use of the northern runway, which impose a ceiling on the number of movements that can take place and would render the forecast growth to 67 mppa unrealistic. The JLAs also noted that there are other planning permissions which may impose indirect restrictions on activities within the airport. The JLAs indicated that they would provide further information on relevant planning history at Deadline 1.
- 3.1.30 The JLAs noted that the ATM cap in isolation allows for a band of passenger numbers that can be achieved depending on fleet mix and the size of planes and indicated that, if there were a robust system of SACs in place, it may be that the ATM cap alongside those SACs would be sufficient to regulate that band. However, the JLAs suggested that the Applicant's SACs are not currently adequately robust.
- 3.1.31 The Applicant accepted that there are indirect controls on the airport but confirmed that these do not affect the airport's ability to meet the future baseline growth, as these indirect controls have been factored into the future baseline. As regards other planning permissions, the Applicant referred to its analysis of the planning history in **ES Chapter 4: Existing Site and Operation** [\[APP-029\]](#), **ES Chapter 5: Project Description** [\[PDLA-006\]](#) and **Planning Statement Appendix A: Gatwick Airport Planning History** [\[APP-246\]](#). The Applicant indicated that it would review any information produced by the JLAs on other planning permissions and respond to that in due course as needed.

- 3.1.32 The Applicant welcomed the JLAs' view that robust SACs would mean that a passenger cap would not be necessary and agreed that the contents of the SACs would be subject to further discussion.
- 3.1.33 National Highways raised various specific concerns with the drafting of the SACs, including in respect of the Transport Mitigation Fund ("**TMF**").
- 3.1.34 The Applicant confirmed that there will be a relationship between the SACs and the section 106 agreement and that the section 106 agreement will contain further information on the TMF. The Applicant confirmed that these details will be discussed with National Highways in due course.
- 3.1.35 CAGNE and Rusper Parish Council raised concerns with the re-allocation of winter night flight movements into the summer season and the summer season movement limit being exceeded.
- 3.1.36 The Applicant noted that the night flight restrictions are a separate regime subject to separate regulatory controls that the DCO for the Project will not affect and that it is not for the DCO to infringe upon, alter or duplicate that regime.
- 3.1.37 The Applicant noted that it has already committed by requirement 19(2) in Schedule 2 to the draft DCO that the northern runway must not be routinely used between the hours of 23:00 – 06:00.
- 3.1.38 The Applicant explained that the DfT night flight regime allows for up to 10% of the previous season's allocation to be carried forward to the next season (if unused), meaning that 10% of the 3,250 movements in the winter season (325) can be carried over to the following summer season, giving a total movement limit for that summer season of 11,525. If the number of night flights overruns the movement limit for a season, the following season's limit will be reduced by the amount of the overrun. If the overrun exceeds 10% of the allocation, the following season's limit will be reduced by double the overrun. In the 2023 summer season the Gatwick Airport allocation was over-used for the first time, due to the exceptional circumstances previously flagged, and the subsequent season's allocation of night flights was reduced accordingly.

4 Agenda Item 4: The Authorised Development – Schedule 1

- 4.1. The Applicant will be asked about the scope of Schedule 1 and whether any specific works should be subject to controls over timing.
- 4.1.1 The ExA queried whether Work Nos. 2 – 7 are necessary to facilitate Work No. 1 (repositioning the northern runway) and whether, as a result, there should be a requirement in respect of Work Nos. 2 – 7.
- 4.1.2 The Applicant explained that, while Work Nos. 2 – 7 facilitate the repositioning of the northern runway, no requirement regarding these works is necessary because the CAA will regulate the safe operation of the northern runway in accordance with CAP 791 (Procedures for changes to aerodrome infrastructure) and will need to be satisfied that all works required for safe operation have been implemented before authorising the commencement of dual runway operations. The delivery of necessary facilitative works for Work No. 1 (repositioning the northern runway) is therefore secured by other controls outside the DCO.
- 4.1.3 **[Post-Hearing Note:** the Applicant has provided further information in relation to this query in its separate responses to the ExA's action points arising from ISH 2 (Doc Ref. 10.9.3), in response to **Action Point 3.**]
- 4.1.4 The ExA queried whether any of Work Nos. 8 – 34 should be related to the proposed increase of ATMs or passenger numbers.
- 4.1.5 **[Post-Hearing Note:** the Applicant has responded to this query in its separate responses to the ExA's action points arising from ISH 2 (Doc Ref. 10.9.3), in response to **Action Point 4.**]
- 4.1.6 The ExA queried whether the hotel works (Work Nos. 26 – 29) can be built before the commencement of dual runway operations under the DCO and, if so, whether they should be dependent on the growth of the airport.
- 4.1.7 The Applicant confirmed that they could be but queried whether this form of control is necessary given that the hotels form part of the wider provision to cater for airport demand, on and off airport. The airport is recognised as a sustainable and suitable location for airport-related hotel development. Local policy does not seek to regulate or manage the pace of provision, which will be regulated by demand. The Applicant noted that there may be benefits in building the hotels earlier in anticipation of increased demand and that additional control is not necessary.
- 4.1.8 The ExA noted that the design detail specified for some work numbers in Schedule 1, including Work Nos. 26 – 29, is limited and queried whether further

detail could be included. The ExA cited section 5.10 of the **Design and Access Statement – Volume 4 [APP-256]** and queried whether some of the detail included in this document and elsewhere in the application might be more appropriately included in Schedule 1 of the draft DCO.

- 4.1.9 The Applicant expressed that its approach has been to prepare and submit design principles in the **Design and Access Statement [APP-253]** which, alongside the limits of works and (where relevant) detailed design approval, control the final design of components of the Project. This is the normal role of a Design and Access Statement. The Applicant expressed that design information is best situated in the design principles rather than in the descriptions of works.
- 4.1.10 The ExA noted that Schedule 1 currently provides a high degree of flexibility and queried whether that should be tested.
- 4.1.11 The Applicant responded that any need for greater detail is better addressed in the design principles rather than building further detail into the work descriptions in Schedule 1 to the draft DCO.
- 4.1.12 The ExA noted that the design principles are broad and requested that the Applicant consider whether more information can be included.
- 4.1.13 **[Post-Hearing Note:** the Applicant has provided further information in relation to this query in its separate responses to the ExA's action points arising from ISH 2 (Doc Ref. 10.9.3), in response to **Action Point 6.]**
- 4.1.14 The ExA noted that design parameters are not included in the DCO itself, as is the case for other DCOs, and queried whether these should be included.
- 4.1.15 **[Post-Hearing Note:** the Applicant has responded to this query in its separate responses to the ExA's action points arising from ISH 2 (Doc Ref. 10.9.3), in response to **Action Point 6.1.]**
- 4.1.16 The ExA queried whether the maximum number of spaces for each car park included in Schedule 1 should be specified and whether the creation of new parking spaces should be linked to commercial ATMs.
- 4.1.17 The Applicant noted that this would be discussed further at ISH 4: Surface Transport but flagged that car parking delivered as part of the Project has benefits off-airport as well as on-airport, in that it reduces off-airport parking. The Applicant and the JLAs therefore have a shared interest in ensuring there is sufficient car parking, but not too much. Car parking is also one of the tools the Applicant has to ensure its mode share commitments in the SACs are achieved

and restricting the deployment of that tool would give the Applicant less flexibility in achieving those mode share commitments.

- 4.1.18 **[Post-Hearing Note:** the Applicant has provided further information in relation to this query in its separate responses to the ExA's action points arising from ISH 2 (Doc Ref. 10.9.3), in response to **Action Point 7.]**
- 4.1.19 The ExA queried which of the works in Schedule 1 are mitigation and which are associated development under section 115 of the 2008 Act.
- 4.1.20 **[Post-Hearing Note:** the Applicant has responded to this query in its separate responses to the ExA's action points arising from ISH 2 (Doc Ref. 10.9.3), in response to **Action Point 8.]**
- 4.1.21 The JLAs indicated that they are concerned that the works authorised by the DCO are not tied to stages of growth of the airport which are enabled by the works and that certain elements should not be provided until it is shown that there is a need for them, particularly regarding parking.
- 4.1.22 The JLAs also expressed concern regarding article 9(4) of the draft DCO and the fact that it provides for the DCO to prevail over existing planning conditions which are incompatible with it, but without including a schedule of affected planning permissions.
- 4.1.23 The Applicant affirmed that it does not accept that there is a comprehensive need to link elements of the authorised development to the growth of the airport and noted that issues of car parking would be discussed in ISH 4: Surface Transport.
- 4.1.24 The Applicant explained that it has not identified any specific permissions for which article 9(4) is necessary, but that the provision is intended to act as a failsafe in case permissions are later identified. The provision states that conditions of planning permissions granted prior to the Order that are incompatible with the Order are superseded by the Order. The Applicant explained that it would defeat the purpose of the provision to need to list out specific permissions and that there is a balance between wanting specificity and having an effective provision. The Applicant confirmed that it would review any information produced by the JLAs, compare that with its own information and consider this further.
- 4.1.25 National Highways raised points regarding the timing of the surface access works, the assumptions in the Transport Assessment, the modelling underlying the highway works and biodiversity net gain on the strategic road network, which the Applicant noted would be subject to a later bilateral meeting between the Applicant and National Highways.

- 4.1.26 **[Post-Hearing Note:** the Applicant and National Highways held a productive meeting on 1 March 2024 to discuss National Highways' concerns and good progress is being made on these issues. The Applicant expects updates on these issues to be recorded through updates to the SoCG with National Highways and in their Principal Areas of Disagreement Summary Statement as the examination progresses.]
- 4.2. The Applicant and Crawley Borough Council will be asked about "excepted development" and the scope of permitted development rights.
- 4.2.1 The ExA noted that "excepted development" is defined in Schedule 2 to the draft DCO by reference to Schedule 2, Part 8, Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the "**2015 Regulations**") and that this definition refers to the airport operator's "operational land". The ExA queried where the boundary of the Applicant's current operational land is shown.
- 4.2.2 **[Post-Hearing Note:** the Applicant has responded to this query in its separate responses to the ExA's action points arising from ISH 2 (Doc Ref. 10.9.3), in response to **Action Point 9.**]
- 4.2.3 The ExA queried which works in Schedule 1 to the draft DCO would fall within the definition of "excepted development".
- 4.2.4 The Applicant explained that the majority of the airfield works would constitute "excepted development" and provided key examples from Schedule 1. The Applicant noted that it regularly uses its permitted development rights to carry out such works.
- 4.2.5 **[Post-Hearing Note:** the Applicant has provided further information in relation to this query in its separate responses to the ExA's action points arising from ISH 2 (Doc Ref. 10.9.3), in response to **Action Point 10.**]
- 4.2.6 The ExA queried how "excepted development" relates to requirements 4 and 10.
- 4.2.7 The Applicant explained that requirements 4 and 10 exclude "excepted development" from needing approval from the relevant local authorities for detailed design and drainage details (respectively). This mirrors the current process where the Applicant exercises its permitted development rights under the 2015 Regulations. The Applicant is required to consult the local planning authority on its proposals but is not required to obtain approval. This regime works well and the Applicant does not consider it necessary or proportionate to impose a level of design control beyond that provided in the 2015 Regulations for elements of the proposed development which constitute "excepted

development". In any event, to offer further reassurance to the JLAs, the Applicant has submitted an amended draft DCO at Deadline 1 (Doc Ref. 2.1 v5) which requires that "excepted development" be carried out in accordance with the design principles.

- 4.2.8 **[Post-Hearing Note:** requirements 4 and 10 ensure that components of the proposed development which could otherwise have been carried out pursuant to Schedule 2, Part 8, Class F of the 2015 Regulations, for which the Applicant would have only needed to consult the local planning authority rather than seek any form of approval, are subject to the same process when carried out as part of the wider Project. Subparagraph (1) of each requirement disapplies the requirement for detailed design approval of works constituting excepted development and subparagraph (4) provides that the Applicant must still consult the local planning authority on works constituting excepted development before they are carried out, as the Applicant would otherwise need to do in compliance with the 2015 Regulations.

The inclusion of this wording is justified as it ensures that the Applicant is not subjected to a stricter planning process for these works than was considered necessary in the making of the 2015 Regulations. By the inclusion of Class F in Part 8 of Schedule 2 to the 2015 Regulations, it was the intention of Government (under the authority of Parliament) that airport operators should be able to carry out the specified types of development in connection with the operation of their airport without the unnecessary delay of obtaining detailed design approval or a separate planning permission from the local planning authority.

That rationale subsists in relation to these types of development when they form part of the wider Project. It remains important that the Applicant can carry out such works to an efficient timetable commensurate with its obligations to manage and operate a busy commercial airport.

Requirements 4 and 10 obviate the need for detailed design approval for excepted development. In all other regards this development comprises part of the development authorised by the DCO and it has been fully assessed within the Applicant's ES.

In the draft DCO being submitted at Deadline 1, requirements 4 and 10 have been amended to commit that excepted development will be carried out in accordance with the Project's design principles. This will secure that excepted development is carried out in accordance with the design details examined as part of the application, ensuring coherence of design for the Project as a whole.]

- 4.2.9 The ExA queried why "excepted development" need form part of the DCO application if it can be carried out pursuant to permitted development rights.
- 4.2.10 The Applicant confirmed that it has applied for a DCO for the Project as a whole on a holistic basis, as is right and fair. The Applicant acknowledges that the Project should be controlled through the DCO and control documents as a whole, even if some elements of it could be carried out under permitted development rights.
- 4.2.11 The JLAs expressed concern with the concept of "excepted development" and its lack of precedent. The JLAs observed that the Applicant presents a single integrated project which is EIA development and that regulation 3(10) of the 2015 Regulations provides that EIA development cannot be permitted under the 2015 Regulations.
- 4.2.12 The Applicant responded that it has done the right thing by applying for the works comprising the Project holistically and that it would have been unusual for it to use permitted development rights for individual elements of the works. The Applicant confirmed that it is aware of regulation 3(10) of the 2015 Regulations but that the purpose of that provision is not applicable here – the Applicant has prepared a full ES of the Project as a whole.
- 4.2.13 **[Post-Hearing Note:** The Project as a whole is EIA development, for which an ES has been prepared. However, this does not mean that the approach of exempting distinct constituent components of the authorised development which, alone, would have benefitted from the Applicant's permitted development rights from design control is inappropriate. This is because:
- The Project as a whole is a major project, including highway improvement works and on-airport works. Together, it is EIA development and required an ES, meaning that the Project as a whole, including the components considered as 'excepted development', has been subject to full EIA and its impacts properly assessed and mitigated (where necessary).
 - However, many of the constituent elements of the on-airport development, the "excepted development", would not have required EIA and would have benefitted from permitted development rights. The fact that these on-airport elements are being brought forward as part of the wider Project should not affect the design control to which it is appropriate for them to be subject.
 - Constraints and mitigation necessitated by the EIA for the Project as a whole are secured in the draft DCO separately to the provisions regarding detailed

design (e.g. article 6 regarding limits of works). There is no need for the design control provisions to fulfil any role in respect of the EIA for the Project. They can therefore reflect the rationale behind the permitted development rights in the 2015 Regulations and apply differently to excepted development and other development.]

5 Agenda Item 5: Managed growth

- 5.1. The Applicant will be asked to address whether any growth authorised by the Development Consent Order should be subject to limits related to environmental effects.
- 5.1.1 The ExA noted that a managed growth approach has been proposed by some Interested Parties, whereby if a limit is breached, further growth is limited. The ExA queried whether the growth of the airport should be subject to limits that relate to environmental effects and, if not, why not.
- 5.1.2 The Applicant explained that growth of the airport under the DCO will be subject to controls related to environmental effects. The alternative approach suggested by the JLAs is not necessary or appropriate, and is strongly resisted. The Applicant is already proposing sufficient and effective mitigation and controls in the form of:
- an overall ATM cap of 386,000 commercial ATMs per annum (requirement 19(1) in the draft DCO);
 - a noise envelope (requirements 15 and 16);
 - the Carbon Action Plan ("**CAP**") (requirement 21); and
 - the SACs (requirement 20).
- 5.1.3 The Applicant is not proposing a specific control document regarding air quality as no significant adverse effects have been assessed in the ES. However, the section 106 agreement for the Project will commit to air quality monitoring.
- 5.1.4 The Applicant noted that the above measures will include controls on the growth of the airport which do not exist today, which should provide sufficient reassurance. Policy, of course, supports the meeting of demand. There should be no starting presumption that it is appropriate to limit or halt growth when other mechanisms are available to manage environmental effects.
- 5.1.5 The Applicant explained that:

- Importantly, the ATM cap itself places a limit on the growth of the airport which is not currently present and it will have the effect of limiting effects that are sensitive to aircraft movements.
- The noise envelope will limit the overall noise of aircraft using the airport, as well as limiting the total area of land experiencing noise above a set threshold. The noise envelope takes effect upon commencement of dual runway operations and the limits are subject to periodic reviews. If a limit is shown to be exceeded or forecast to be exceeded, the Applicant must submit an action plan to the independent air noise reviewer (currently proposed to be the CAA) for approval. In the event of consecutive breaches of a noise envelope limit or a forecast exceedance, the Applicant is prevented from declaring further capacity for commercial ATMs, thereby offering a control on the growth of the airport.
- The CAP limits construction emissions and tightens limits for airport ground operations to 2030 and 2040. There are no specific commitments regarding 'scope 3' aviation emissions because the Applicant has a relative lack of control over these emissions and these are for the Government to control through policy (including its *Jet Zero strategy: delivering net zero aviation by 2050 ("Jet Zero")*) and legislation. The Applicant will submit monitoring information to Government and, if any issue is shown, the Applicant will have to submit an action plan to address this. Government would then have at its disposal the measures it thought were necessary to control emissions, in a policy context where it has concluded that constraints on airport growth are not necessary to ensure consistency with its climate change obligations.
- The SACs commit to achieve travel mode shares and include both 'headline' commitments and a series of specific measures in support of these. There are annual monitoring processes and, if commitments are not met, a requirement to submit an action plan to the Transport Forum Steering Group which will provide for further measures to ensure compliance with the overall SACs. Again, there is nothing in policy to suggest that constraints in growth are necessary to achieve acceptable controls over transport impacts.

5.1.6 The Applicant explained that, in the context of the above comprehensive package of measures, it does not consider that any alternative form of 'green controlled growth' ("**GCG**") or equivalent is necessary, because the Applicant's measures achieve something similar in effect and alternative measures are not

justified given the impacts of the Project and the effect of the proposed mitigation.

- 5.1.7 The Applicant emphasised that there is no policy justification for relating GCG to carbon because there is nothing in Government policy to suggest that carbon emissions must be controlled through constraints on the growth of airports. Government policy is that the growth of airports can be allowed and is not inconsistent with the Government's wider work on controlling carbon emissions. It is appropriate for the airport to monitor and report to Government and for the Government to bring forward measures that are consistent with *Jet Zero* as needed.
- 5.1.8 The Applicant explained that the SACs must be met as and when the airport grows and that it would be disproportionate to impose a constraint on growth by reference to those commitments. It is more appropriate for specific mitigation measures to be identified, as have been. There is no policy requirement to constrain growth automatically, rather than applying specific mitigation. The Applicant concluded that any form of GCG or equivalent in this regard is therefore unnecessary.
- 5.1.9 The ExA noted that air quality is not the subject of any DCO requirement, but that monitoring of air quality standards is included in the heads of terms for the section 106 agreement. The ExA queried whether air quality could be used as a control method, not allowing growth beyond set emissions.
- 5.1.10 The Applicant explained that this is unnecessary. **ES Chapter 13: Air Quality [APP-038]** concludes that operational period impacts from airside and traffic related emissions are predicted to not be significant and no further mitigation is required. There is therefore no justification for airport growth to be limited in relation to these emissions. The monitoring regime to be included in the section 106 agreement is a separate matter and will replace existing arrangements in the current section 106 agreement.
- 5.1.11 The ExA queried whether the CAP should be linked to proposed growth.
- 5.1.12 The Applicant explained that this is inappropriate. The Government is the body charged with ensuring compliance with statutory limits on economy-wide carbon emissions and it has set out its policy on aviation through *Jet Zero*. That policy applies to any airport. The CAP provides for Gatwick Airport to report to Government and the Applicant understands that the Government will be bringing forward a number of measures under *Jet Zero*. There is no need to impose constraints on airport growth in the DCO when it is for Government to impose these for airports more widely. A similar point applies in the case of surface

access – there is no need for controls to be imposed on airport growth when commitments to mode share, access by non-car modes and impacts on the wider highways network can be controlled through mitigation, having regard to the successful track record of Gatwick Airport in promoting sustainable surface access.

- 5.1.13 The ExA noted that paragraphs 1.2.1 and 1.2.2 of the CAP state that the CAP is aligned with *Jet Zero* but that the Applicant's commitments on *Jet Zero* are not contingent on the Project being consented. The ExA queried whether, if the DCO is granted, it could be tied to *Jet Zero*.
- 5.1.14 The Applicant reiterated that, for the reasons above, the appropriate approach is for the airport to report to Government and for the Government to decide which measures to bring forward under *Jet Zero*. Government action under *Jet Zero* would be applied to the aviation sector generally, without any necessary link to a particular consent decision and it would not be necessary to duplicate within the DCO the potential for actions that the Government would take in any event to implement *Jet Zero*.
- 5.1.15 The ExA noted that aircraft noise was to be dealt with at ISH 5: Aviation Noise and that surface access was to be dealt with at ISH 4: Surface Transport. The ExA noted requirement 20 of the DCO which requires the authorised development to be carried out in accordance with the SACs. The ExA queried whether the SACs could be used to manage growth.
- 5.1.16 The Applicant explained that, insofar as the SACs anticipate a mechanism by which the growth of the airport and delivery of the SACs can be secured, the better approach is through adherence to the sustainable transport initiatives and if more needs to be done to manage growth, the SACs provide for that. The SACs include a number of specific and strong commitments that will allow impacts on the road network and surface access more generally to be managed and mitigated, such that it would be unnecessary and inappropriate for them to be used, contrary to their intended purpose, to control airport growth.
- 5.1.17 The JLAs expressed that it is a key concern that the DCO provides too much flexibility to allow development to proceed with only retrospective checks, and raised specific concerns with the operation of the SACs. The JLAs noted that there are proposals before the Secretary of State in respect of the Luton Airport expansion application for GCG and that it will be for the SoS to decide if those controls are necessary.
- 5.1.18 The Applicant responded that it has carried out a full EIA of the Project (with the proposed ATM cap) to ensure it is acceptable. Provided the Applicant has

properly assessed the proposed development, identified worst case effects and mitigated accordingly through the construction and operative lifetime of the Project, it is not necessary for the Applicant to do more. The Applicant noted that its EIA concludes that, if ATM growth meets the cap, with the proposed mitigation there are no adverse environmental effects. In such circumstances, no additional controls are required.

- 5.1.19 The Applicant rejected the notion that its proposed controls are only retrospective. The noise envelope requires forecasting and allows for the application of sanctions on the basis of forecast effects. Both the SACs and CAP include measures to identify the trajectory of the targeted metric and provide for action to be taken in response to any concerns that the airport may be deviating in the delivery of its commitments. The Applicant noted that Gatwick Airport already performs very well in achieving a good transport mode share and aspires for that to continue, even without the Project. The strength of the proposed mitigation should be seen in the context of an airport that is operating well and with no reason to suggest that this will not continue.
- 5.1.20 The Applicant observed that the ExA's primary task in this examination is to determine whether the development and mitigation as proposed in this application is acceptable. In any event, regarding the Luton Airport expansion, the GCG approach is without precedent and it is not known whether it will succeed operationally. The Applicant noted that the concept of GCG first appeared as Environmentally Managed Growth (or "**EMG**") in Heathrow Airport's consultation on a third runway and was then replicated for Luton Airport. In both cases, GCG/EMG was put forward instead of an ATM cap. However, in respect of this Project, the Applicant has already proposed an ATM cap.
- 5.1.21 The Applicant emphasised that it is not what mitigation measures are called but what is committed to that is important. The Applicant reiterated that, unlike GCG or EMG, it has put forward a limit on construction carbon emissions; has committed to a more impressive sustainable transport mode share than Luton's GCG; proposes a noise envelope that steps down rather than up; and has gone further on airport operation carbon emissions than Luton or *Jet Zero*, committing to net zero by 2030. The Applicant emphasised that its rejection of GCG is not to say that it does not take environmental measures seriously – it does, and it is proud of the commitments it has put forward as part of the application.
- 5.1.22 The Applicant noted that the ANPS is clear that any measures or restrictions imposed must be proportionate and meet the tests of necessity. In the light of the relatively limited significant environmental effects in this case (compared with

other airport expansion projects), suggestions that growth should be curtailed or penalties imposed is entirely disproportionate.

- 5.1.23 CAGNE noted that no part of Government policy says climate considerations should be excluded for airport expansion or given no weight and that the assumptions in *Jet Zero* do not prejudice the outcome of future airport expansions.
- 5.1.24 The Applicant emphasised that it does not suggest that carbon emissions are not relevant to the examination. The Applicant noted that it has assessed these in **ES Chapter 16: Greenhouse Gases [APP-041]** and has concluded that there are no significant effects. The Applicant cited paragraph 4.54 of the Airports National Policy Statement, which states that the Secretary of State should approach applications on the assumption that other pollution control regimes will be properly applied and enforced. The Applicant noted that there are other regimes controlling carbon emissions and that these should therefore be assumed to work effectively.

6 Agenda Item 6: Legal agreements

- 6.1. The Applicant will be asked about the scope of proposed legal agreements and their progress.
- 6.1.1 The ExA noted that following the expiry of the current section 106 agreement, the Applicant proposes an extension of this agreement until the commencement of the DCO and then a new section 106 agreement in respect of the Project would take effect. The ExA queried why the Applicant has decided to adopt the approach of entering into a legal agreement rather than including all commitments in the DCO and whether DCO requirements could be used for the commitments proposed to be included in the section 106 agreement.
- 6.1.2 The Applicant explained that various measures are being included in the section 106 agreement, particularly financial contributions and the establishment and governance of engagement groups, which would not be appropriate to detail in the DCO itself. There is a need for the DCO and a section 106 agreement alongside it.
- 6.1.3 **[Post-Hearing Note:** a description of the approach to securing certain mitigation through a section 106 Agreement rather than through a DCO requirement will be submitted with the draft section 106 Agreement at Deadline 2.]
- 6.1.4 The ExA queried whether the Applicant is proposing a single agreement with all of the JLAs or separate agreements.

- 6.1.5 The Applicant clarified that it is proposing a single agreement and that it is currently a live issue under discussion as to which of the JLAs will be parties. Any party that has obligations under the section 106 agreement will either be a party or enter into a deed of covenant pursuant to the section 106 agreement.
- 6.1.6 The ExA noted that heads of terms for the section 106 agreement are set out at Table 5.2 of the **Planning Statement [APP-245]** and requested an update on progress in discussing these with the JLAs.
- 6.1.7 The Applicant confirmed that a draft section 106 agreement was sent to the appointed solicitors acting for the JLAs on 1 February 2024 and that comments were received back on 23 February 2024, which the Applicant is currently reviewing. The Applicant confirmed that it will submit a draft section 106 agreement into the examination at Deadline 2.
- 6.1.8 The ExA queried whether the Applicant is confident that the section 106 agreement will be completed before the end of the examination and the Applicant confirmed that it is.
- 6.1.9 The ExA noted its concern that agreements sometimes are not completed before the end of the examination and that the ExA then has to consider how to deal with that situation. The ExA queried what the fallback position is if agreement has not been reached by that time.
- 6.1.10 The Applicant reiterated that it is confident that agreement will be reached and that it has therefore not considered any fallback option in depth. However, the Applicant noted that there are methods that could be used, including unilateral undertakings for matters not agreed and bilateral agreements for matters that are agreed.
- 6.1.11 The ExA reiterated that all parties should ensure that matters included in the section 106 agreement are those not appropriate to be dealt with by requirements in the DCO and that they comply with all relevant statutory tests.
- 6.1.12 The ExA queried whether the Applicant is intending to have a separate legal agreement with National Highways.
- 6.1.13 The Applicant confirmed that protective provisions for the benefit of National Highways are included in the DCO and that these will function similarly to a legal agreement and mean that a separate legal agreement is not required. The Applicant confirmed, however, that it would not rule out a separate legal agreement should that prove necessary.

- 6.1.14 GACC, Rusper Parish Council and CAGNE stated that they wish to be involved in the section 106 agreement negotiations.
- 6.1.15 The ExA noted that the draft section 106 agreement will be submitted into the examination and can be commented upon in that context.
- 6.1.16 The Applicant confirmed that the section 106 agreement would be negotiated between the Applicant and the JLAs and that other parties will have the opportunity to comment upon it through the examination.

7 Agenda Item 7: Control documents and subsequent approvals

- 7.1. The Applicant and local authorities will be asked about the approach to the approval of control documents.
 - 7.1.1 The ExA confirmed that it would set out its questions in respect of this agenda item in written questions.

8 Agenda Item 8: Stakeholder engagement

- 8.1. The Applicant will be asked about its existing and proposed approach to community and stakeholder engagement during both the proposed construction and operational phases.
 - 8.1.1 The ExA noted that the Applicant's response to the Procedural Decision issued on 1 December 2023 [\[AS-115\]](#) includes a list of existing engagement mechanisms and queried whether there will be changes to these existing mechanisms if the DCO is granted.
 - 8.1.2 The Applicant confirmed that broadly the existing mechanisms will continue. The Applicant explained that the main measure for engagement is through the Gatwick Airport Consultative Committee ("**GATCOM**"), which is a statutory body that meets four times per year and is made up of JLAs, businesses and resident / interest groups. GATCOM has sub-groups – the Steering Group and Passenger Advisory Group. GATCOM is the principal mechanism for engagement and the Applicant takes its responsibility to attend that committee very seriously.
 - 8.1.3 The Applicant explained that there are also a large number of informal engagement mechanisms, some of which are in the current section 106 agreement. These include the air quality annual meeting, transport forum and

engagement with JLAs to discuss land use planning matters and transport. Other informal measures, including noise groups such as NATMAG, will also continue.

- 8.1.4 **[Post-Hearing Note:** positive relations with the local authorities and the wider community are critical to the safe and successful operation of the airport. The Applicant hosts a wide range of formal and informal forums and proactively engages in discussions with local community representatives to further understand the views of the local community, ensure that impacts of the airport are mitigated and that the benefits of the airport are realised. GAL has a dedicated external engagement team who look for opportunities to reflect the priorities of the local authorities and communities where possible and the Applicant continues to adapt its engagement to changing priorities.

In 2001 the Applicant voluntarily decided to legally bind itself to a framework of engagement mechanisms through the 2001 section 106 Agreement which were to continue regardless of the changing priorities over time. This has proved a successful framework for engagement, supplemented by the formal and informal engagement not legally committed to. Those mechanisms have been adapted and have evolved to the engagement mechanisms that the Applicant is currently legally committed to through the 2022 section 106 Agreement.

In relation to the Project, the Applicant will enter into the DCO section 106 Agreement which will continue to legally bind the Applicant to a number of elements of the existing engagement framework committed to under the 2022 section 106 Agreement. In addition, it is currently proposed that the DCO section 106 Agreement will add five new engagement groups to the framework which relate to very specific matters.

When the Applicant submits the draft DCO section 106 Agreement at Deadline 2, it will also submit a comparison document showing the relationship between existing and proposed obligations, with appropriate commentary.

The Applicant operates in a highly regulated space and in recognition of the importance of the airport's interaction with its surroundings, it is required to host, manage and maintain specific engagement mechanisms with the public and local stakeholders. This is required by specific statutes and regulations like the Civil Aviation Act 1982 and the Transport Act 2000. The delivery of the Project would not affect the engagement mechanisms required of it by law.]

- 8.1.5 The ExA noted that, if the DCO is granted, there will be a major construction programme and queried whether the existing mechanisms are sufficient to deal with that. The ExA observed that the Community and Engagement Management Plan (referenced in paragraph 2.2.9 of the **Code of Construction Practice**

[[APP-082](#)] is an internal compliance document and does not require approval by local planning authorities. The ExA queried why no approval is required for that document and whether the Applicant has any other community consultation proposals in mind.

- 8.1.6 The Applicant confirmed that throughout construction it will continue to engage with community representatives and local authorities. The Applicant noted that, as it does for all significant works, its contractors would apply under section 61 of the Control of Pollution Act 1974 and that measures can be agreed with the local planning authority through that process.
- 8.1.7 The ExA clarified that the Applicant is proposing a large project and that the ExA would expect to see a draft community engagement plan at this stage.
- 8.1.8 The Applicant reiterated that the approach to community engagement is included in, and managed through, the **Code of Construction Practice** [[APP-082](#)] but agreed to consider whether this should be further detailed.
- 8.1.9 [**Post-Hearing Note:** the Applicant has provided further information in relation to this query in its separate responses to the ExA's action points arising from ISH 2 (Doc Ref. 10.9.3), in response to **Action Point 12.**]
- 8.1.10 CAGNE, Mole Valley District Council and Lingfield Parish Council raised concerns over the effectiveness of existing engagement bodies, including GATCOM, and the accessibility of GATCOM to local residents.
- 8.1.11 Tom Crowley (Chair of GATCOM) clarified that 14 of the 28 members of GATCOM are local authority representatives, representing four parish councils, six district and borough councils and four county councils.
- 8.1.12 The Applicant reiterated that it takes community engagement very seriously. The Applicant has a dedicated team for engagement and tailors its engagement to specific projects or proposals and works closely with other relevant bodies. In respect of the recent works to the Gatwick Airport railway station, the Applicant worked with Network Rail to ensure that information on rail timetabling was communicated to passengers in advance so that they could plan accordingly. The Applicant worked with surface access partners to ensure that measures (such as additional buses) were accommodated. For the main runway resurfacing project (undertaken in 2022), the Applicant's contractors applied under section 61 of the Control of Pollution Act 1974, which included a bespoke stakeholder engagement plan. That same process would be used for aspects of the proposed development and the Applicant would work with the local planning authority to agree a set of bespoke engagement measures, as it does for routine

works. For the runway resurfacing, a bespoke area of engagement based on predicted noise levels was agreed with the local planning authority and the Applicant's letter drop was tailored to that area. Information and updates are regularly disseminated to all local parish councils. The specific details of appropriate engagement will be dictated to an extent by the precise construction methods and staging and that is why the Applicant has not gone into detail at this stage of the Project.

- 8.1.13 Mole Valley District Council and the JLAs raised concerns that the section 61 process comes too late in the Project to adequately deal with engagement.
- 8.1.14 The Applicant emphasised that it must not be overlooked that GATCOM is the main oversight body, that this has been proven as a competent and successful organisation and that it issues quarterly updates on the progression of the Project. The Applicant noted that in November 2023 GATCOM issued a press release explaining that research carried out by the UKACC's (the umbrella body representing all UK Airport Consultative Committees), concluded that GATCOM was meeting all of the DfT's expectations and all of its statutory obligations. The Chair is quoted as saying *"This is very much due to the hard work and dedication of our members, their colleagues and also very much a result of the support we receive from Gatwick Airport Limited."*

9 **Agenda Items 9, 10 and 11: Action points arising from the Hearing, Any other business and Close of Hearing**

- 9.1.1 The Applicant did not make any submissions under these agenda items.