

Written summary of oral submissions made at Compulsory Acquisition Hearing 1 on behalf of Marathon Asset Management MCAP Global Finance (UK) LLP (“Marathon”)

1 INTRODUCTION

- 1.1 This document summarises the submissions advanced by Marathon Asset Management MCAP Global Finance (UK) (“Marathon”) at Compulsory Acquisition Hearing 1 on 2 May 2024.
- 1.2 The main items for discussion were the Applicant’s case for Compulsory Acquisition and temporary possession, site-specific issues for the Applicant and site specific representations by Affected Persons. Other topics also included statutory undertakers, Crown land and funding.
- 1.3 The hearing opened at 10am at the Sandman Signature London Gatwick Hotel, and closed at 1pm.

2 ATTENDEES ON BEHALF OF MARATHON

- 2.1 Rebecca Clutten, Counsel instructed by Bryan Cave Leighton Paisner LLP (“BCLP”), appeared on behalf of Marathon.
- 2.2 John Sayer (Head of Regeneration and Chartered Surveyor, Ardent), Tom Althorpe (Stantec Senior Transport Planner) and Eleanor Girdziusz (Stantec UK Building Acoustic Lead) also made submissions on behalf of Marathon.

3 SUMMARY OF SUBMISSIONS

Agenda Item	Summary of oral submission
5.1 Site-specific representations by Affected Persons	<ol style="list-style-type: none">1. Since submission of WRs, there has been positive and meaningful engagement with GAL and advisors re addressing impacts of CA and Scheme on Marathon’s interests and it’s Holiday Inn hotel (“Property”).2. Discussions remain ongoing and both parties are working towards agreement in principle in June/July 2024 (D6/7).3. Notwithstanding the general positive progress made, there remain some key areas where concerns have not yet been properly addressed or where further information/discussion is needed. Marathon is seeking the ExA’s assistance through the Examination process in obtaining such information from GAL. We highlight below details of the 6 information requests Marathon are seeking the Ex A’s assistance in obtaining.<ol style="list-style-type: none">a. The ExA will have seen reference in GAL’s Response to Written Questions and GAL’s Response to Marathon’s Written Reps [REP3-087 and REP3-072] that GAL “during negotiations agreed to use all reasonable endeavours to reduce land acquisition where possible” (page 207 of REP3-072) and to the Applicant putting two options for an alternative temporary access options to Marathon.b. The Applicant has agreed to work up a “concept design” for a temporary access to the north of the property to enable Marathon to assess its adequacy in more detail. Marathon is concerned that no timescale has been provided as to when this will be available.

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	<p>c. As matters stand, the DCO (a) would allow permanent acquisition of ALL the ‘pink’ land and there is no enforceable mechanism to require GAL to take less; and (b) permits the acquisition of the only access into the hotel and makes no provision for a new temporary or permanent access.</p> <p>d. In the absence of concrete, deliverable and legally secured provision for an alternative access, the DCO therefore leaves the entire viability of the Hotel at risk, and by permitting wide ranging permanent acquisition, risks compromising the future development of southern parcel.</p> <p>4. If agreement cannot be reached with GAL, Marathon will have to look to the ExA to take action to avoid this situation. It is therefore important that the ExA is properly appraised of the issues now.</p> <p>5. The key issues are:</p> <ul style="list-style-type: none">a. Scale of land take;b. Clarity regarding the Northern Access proposal;c. Protection for services; andd. The need to mitigate noise effects and effects on the Hoppa Bus service. <p><u>Scale of land take:</u></p> <p>6. Marathon acquired a portfolio of hotels in 2021, which included the Holiday Inn Gatwick. As a prudent owner, Marathon has considered how to enhance this property. The existing hotel has 216 bedrooms, but past planning permission has allowed for up to 300 bedrooms, indicating the site could be utilised more intensively.</p> <p>7. Marathon is concerned that Gatwick Airport Limited's (GAL) proposals could impact the hotel's development potential. In Marathon’s view, reducing the permanent land take would mitigate against the risk of GAL’s land requirements and Marathon’s ambition to maximise its site competing. It is not clear why all the land is included for permanent acquisition (particularly parts of plots 1/057 and 1/026). Indicative permanent road layouts for the Longbridge Roundabout do not indicate the need to permanently acquire all of the land.</p> <p>Information Request 1: Please can GAL provide plot specific justification for the extent of proposed permanent acquisition of land and rights at Marathon’s Property including details of the underlying technical design of the highway works relating to the Longbridge Roundabout.</p>
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	<p>This should also explain why rights cannot be acquired as an alternative to outright acquisition.</p> <ol style="list-style-type: none">8. The legal basis upon which Marathon will access the property post-construction works remains yet to be determined. Marathon’s preference is for it to have ownership and control of the land abutting public highway.9. GAL, via their agents, have confirmed they are unwilling to reduce permanent land take at this stage. It is disappointing that this stance has been taken given the concerns raised and apparent lack of justification for the extent of land take.10. To mitigate this risk, Marathon has offered alternative approaches to land access and ownership. Specifically, Marathon has proposed providing temporary rights over land during construction, as well as permanent easements for services, in lieu of permanent land acquisition by GAL.11. Discussions on a mechanism to agree on reduced permanent land take or ongoing. In the absence of reaching an agreement an enforceable provision should be imposed, obliging GAL to take steps to reduce permanent land take once further design details are known. <p>Northern Access:</p> <ol style="list-style-type: none">12. The powers sought by GAL give them the ability to permanently acquire part of the existing and only access road into the hotel that leads from London Road. GAL has confirmed in discussions that it would be necessary to temporarily close this access during construction works. The dDCO does not provide for any alternative.13. A single carriageway is currently used as an exit from the hotel onto Povey Cross Road - both parties have identified that it would not be possible to utilise this for ‘two way’ traffic. GAL and Marathon have therefore been discussing how continuity of access can be maintained. Without constant vehicular access, it will not be possible for the hotel to operate.14. On 14th March 2024, Marathon received two temporary access designs from GAL: one located immediately north of the current access (Southern Option) and one located immediately to the south of the order limits along A217 (Northern Option).15. Upon review, the southern access, although it is possible that it may work technically, is considered to be a sub-optimal layout, with the potential for general traffic safety concerns and also how pedestrians and cyclists would navigate the temporary layout to be raised during a Road Safety Audit.16. It is therefore clear that the northern option is preferable to Marathon due to the traffic and distance from work at the
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	<p>Longbridge Roundabout. It is also the option GAL has confirmed it is working up. However, Marathon still had questions regarding feasibility, in particular:</p> <ol style="list-style-type: none">a. how the right turn into the hotel from the A217 would be prevented as per the current access arrangement,b. providing a layby for the parking of the Hoppa Bus. <p>17. At the meeting on 27th March where the design options were discussed GAL agreed to provide further detail regarding the design standards and concepts, to enable agreement that the design of the temporary access would be suitable in advance of the detailed design stage. Further design work needs to be undertaken to be certain that the proposed northern road is to an appropriate standard and in a format that integrates with hotel's internal road layouts.</p> <p>18. GAL also confirmed that layby parking and right turn prevention would be looked at in detail and form part of the updated information pack provided to our client. We have yet to receive this information but understand this is still being worked on.</p> <p>19. This information is critical so Marathon and the ExA can be assured that a safe and suitable temporary access can and will be provided to their hotel. Any other outcome risks the closure of the hotel.</p> <p>20. Critically, the provision of the temporary access requires the use of land that is outside of GAL's proposed compulsory acquisition powers (cf. GAL response to ExAQ1 CA 1.7 [REP3-072]). It is therefore imperative that an agreement is achieved in a timely manner.</p> <p>21. Information Request 2: Please can GAL provide the details and drawings relating to the concept design for the proposed temporary access to the north of the Property to demonstrate to Marathon and he Ex A that it is a satisfactory solution. This should include details of layby parking and right turn prevention and also identify any land outside of the Order Limits required for the proposed access.</p> <p>Proportionality of interference with rights/injurious affection:</p> <ol style="list-style-type: none">22. Para 8 of PINS' Guidance on Compulsory Acquisition notes that interference with the private interests of Affected Persons must be shown to be necessary/proportionate23. Impacts will not be necessary/proportionate if they can reasonably be avoided through mitigation.24. There are two aspects of particular concern outstanding:
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	<ul style="list-style-type: none">a. Noise impacts; andb. Impact on Hoppa bus service/bus provision. <p>Noise:</p> <ul style="list-style-type: none">25. Ongoing discussions between acoustic advisers for Marathon and GAL are yet to reach a consensus on the anticipated noise impacts of GAL’s proposals.26. GAL has requested that Marathon provide cost details of the replacement of windows, as a sound mitigation approach, where another hotel in their portfolio was impacted by construction noise during changes to the road network.27. There is a concern that GAL’s decision on whether to undertake any noise mitigation measures will be driven by cost and commercial risk to GAL, rather than by efforts to employ all reasonable measures to reduce impacts on an affected person.28. Marathon’s experience elsewhere in relation to a DCO that affected one of its hotels was that mitigation had to be provided part way through construction, which resulted in additional overall cost to that particular promoting authority as there was a loss of business claim in addition to meeting the costs of mitigation works. Marathon’s view is that mitigation works should be undertaken on their property in advance of any works commencing so works are not undertaken only once a business impact arises. Marathon has offered to co-ordinate these works on the basis that the costs are met by GAL. Marathon’s view is that undertaking a series of mitigation works to the Property will reasonably and appropriately reduce the impact of the scheme.29. A meeting was held with GAL’s noise consultants on 24th April 2024. In this meeting, further details were provided to Marathon on the ground noise modelling and the anticipated construction works. GAL’s position at this meeting, was that there is no ground noise impact expected at the hotel and that the proposed noise mitigation measures would reduce construction noise to a reasonable level.30. Marathon disagree with their findings on the following basis:<ul style="list-style-type: none">31. With regard to ground noise, the model that has been produced, only predicts noise emission levels from a single aircraft tracking through the airport. It also only tracks the aircraft to the point at which it enters the forecourt of the Northern Terminal and does not track a full path to any of the stands themselves.32. The model therefore fails to account for the cumulative effect of multiple aircraft using the Northern terminal stands – a situation which currently sees several exceedances of the 45 dB L_{Amax} best
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	<p>practice limit during a typical night in bedrooms at the rear of the hotel. We are therefore concerned that the ground noise model fails to account for realistic typical operations at present or in the future increased-use scenarios.</p> <p>33. Information Request 3: We request that the ExA ask GAL to provide assessment results for the following:</p> <ul style="list-style-type: none">a. A model scenario which includes multiple aircraft using the Northern Terminal forecourt based on current typical operations to allow validation against our acoustic measurements at the hotel.b. A model scenario which includes multiple aircraft in future years (including aircraft using the new terminal stands and relocated central holding area). <p>34. For construction noise, information was provided by GAL for several possible works activity scenarios. However, these failed to include a realistic scenario whereby works are undertaken simultaneously directly outside the front of the hotel and on the nearside of Longbridge Roundabout. Additionally, no assessment was provided for the A23 Bridgeworks, which will see substantial construction activity during both the day and night-time periods.</p> <p>35. As the ExA may recall from the Issue Specific Noise Hearing, the Holiday Inn is not only sensitive to night-time noise levels, but also to day-time conditions as well, due to the hotel holding airline contracts to host cabin crew during layovers. Marathon are therefore concerned that the proposed constructions works will put severe limitations on the operation of the hotel.</p> <p>36. At present, a 2.5 m noise barrier is proposed along the works boundary. Due to its height and the presence of a gap for the access route, this is not expected to provide effective screening for any but the lowest floor levels.</p> <p>37. Information Request 4: Given this, Marathon request that the ExA ask GAL to provide:</p> <ul style="list-style-type: none">c. Assessment results for a realistic worst-case model scenario with works activity simultaneously occurring at the front of the hotel (along A217) and to the nearside of Longbridge Roundaboutd. Assessment results for anticipated A23 Bridgeworks activities during the day and night. <p>38. GAL should also be requested to consider façade enhancements as a way to mitigate the potential noise impacts on the front façade of the hotel.</p>
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	<p>39. As regards the Hoppa/suitable bus provision, a key driver of business for Marathon, together with a number of other hotels, is the provision of reliable transport to and from the airport terminal buildings. A ‘Hoppa’ bus service, operated by a third party, currently provides regular services to and from the airport. The services depart every 15 or 20 minutes and is available on a 24 hour basis. 40% of the hotels revenue generated from room-rates is customers purchasing a ‘Park, Stay & Go’ package, for which the Hoppa is a key ingredient of the offer. The Hoppa is also used by commuting hotel staff and the airline crews staying at the hotel. Timely and efficient transport is vital for them to fulfil their roles.</p> <p>Hoppa Bus:</p> <p>40. Marathon is concerned by GAL’s limited engagement with the Hoppa bus provider and at this time there are no detailed plans how to mitigate against delays If journeys to or from the terminal buildings become unreliable during construction works this will have a detrimental impact on the hotel. (NB Response to Marathon’s WR at p.207 [REP3-072])</p> <p>Information Request 5: Please can GAL provide details of (a) how it proposes to ensure that the Hoppa bus continues an equivalent service to the Property during the construction works relating to the project (b) what route is proposed (c) discussions that have been held with the Hoppa bus operator to ensure continuity of the service and minimise disruption.</p> <p>Protection for services:</p> <p>41. In addition to the traditional utilities and services entering and exiting the hotel, a mechanical wastewater facility is operated on site. The continuous operation of this is vital to ensure sanitation and wastewater facilities operate. It is unclear what assessment (if any) of this has been undertaken to date. Appropriate protections will be required to ensure services are not disrupted. The wastewater facility is vital to operation of the hotel.</p> <p>42. No provision for this in Order at present.</p> <p>Information Request 6: Please can GAL provide details of what assessment it has undertaken in relation to the mechanical waste water facility operated on the Property and of how this will be protected/maintained during the construction works.</p>
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15 May 2024