



# Gatwick Airport Northern Runway Project

Written Summary of Oral Submissions ISH7: Other Environmental Matters

**Book 10**

VERSION: 1.0

DATE: MAY 2024

Application Document Ref: 10.25.2

PINS Reference Number: TR020005

## Contents

1	Introduction	2
2	Agenda Items 1 and 2: Welcome, introductions and arrangements for the Hearing; Purpose of the Hearing	2
3	Agenda Item 3: Future Baseline	2
4	Agenda Item 4: Water and Flooding	12
5	Agenda Item 5: Air Quality	19
6	Agenda Item 6: Draft Section 106 Agreement	23
7	Agenda Items 7, 8 and 9: Action points, any other business, and close of hearing	31

## 1 Introduction

- 1.1.1 This document contains Gatwick Airport Limited's (the "**Applicant**" or "**GAL**") summary of oral evidence and post hearing comments on submissions made at Issue Specific Hearing 7: Other Environmental Matters ("**ISH7**") held on 1 May 2024. Where the comment is a post-hearing comment submitted by the Applicant, this is indicated. The Applicant has separately submitted at Deadline 4 (Doc Ref. 10.26.3) its response to the Examining Authority's ("**ExA**") Action Points arising from ISH7, which were published on 7 May 2024 [EV13-009].
- 1.1.2 This document uses the headings for each item in the agenda published for ISH7 by the ExA on 17 April 2024 [EV11-001].
- 1.1.3 The Applicant, which is promoting the Gatwick Airport Northern Runway Project (the "**Project**") was represented at ISH7 by Scott Lyness KC, who introduced the following persons to the ExA:
- a. John Rhodes OBE, Senior Director, Quod;
  - b. James Bellinger, Associate Director, Arup;
  - c. Ryngan Pyper, Director, RPS;
  - d. Michael Symons, Senior Associate Director and Head of Flood Risk Management, Jacobs;
  - e. Ian Waghorn, Principal Environmental Water Engineer, Gatwick Airport Limited; and
  - f. Tim Norwood, Chief Planning Officer, Gatwick Airport Limited.

## 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 Baseline

- 3.1. **Following on from responses at previous hearings and written questions (ExQ1) the Applicant and other IPs will be asked general questions relating to the coverage of the future baseline case.**

- 3.1.1 The ExA asked the Applicant to explain its response to ExQ1 GEN1.17 [REP3-091] further. This details the capacity for the baseline case for both terminals for

departures and arrivals. The ExA asked the Applicant to confirm that the figures in Table 2 are for the full extent of the Future Baseline ("FB") projections, i.e. 67.2 million passengers per annum ("mppa") by 2047.

- 3.1.2 **[Post hearing note:** Please see the response to Action Point 1 in **The Applicant's Response to Actions ISH 7: Other Environmental Matters** (Doc Ref. 10.26.3).]
- 3.1.3 The ExA noted that Table 2 in the response to GEN 1.17 shows 100 extra passenger departures per hour for both terminals between summer 2024 declaration and the FB: 3800 to 3900 for the South Terminal and 5400 to 5500 for the North Terminal. Table 3 shows the terminal facilities and states that these will not alter between the current provision (at summer 2024 declaration) and under the FB projection. The ExA asked the Applicant to confirm its understanding that this was correct.
- 3.1.4 The Applicant confirmed this was correct.
- 3.1.5 The ExA asked the Applicant to explain what the 100 extra departing passengers per hour for both terminals was being caused by – the assumption of higher seat utilisation and that the average size of departing aircraft will increase?
- 3.1.6 The Applicant confirmed it would respond in writing.
- 3.1.7 **[Post hearing note:** Please see the response to Action Point 2 at **The Applicant's Response to Actions – ISH7 – Other Environmental Matters** (Doc Ref. 10.26.3).]
- 3.1.8 The ExA asked for justification that the extra 100 passengers departing every hour from each terminal would not need additional facilities, such as security lanes.
- 3.1.9 The Applicant confirmed it would respond in writing.
- 3.1.10 **[Post hearing note:** Please see the response to Action Point 3 at **The Applicant's Response to Actions – ISH7 – Other Environmental Matters** (Doc Ref. 10.26.3).]
- 3.1.11 The ExA noted that the figures in Table 2 in the response to ExQ1 GEN.1.17 [[REP3-091](#)] show increases in arrivals comparing summer 2024 to the FB scenario of 4450 (up from 4200) and 3700 (up from 3350) in the north and south terminals respectively. This is more than the percentage increase in departures, at 6% and 10% respectively. The ExA asked whether this would be sustainable in a busy hour and would service standards still be met, given there are no proposals to upgrade existing arrivals facilities?



- 3.1.12 The Applicant confirmed it would respond in writing.
- 3.1.13 **[Post hearing note:** Please see the response to Action Point 4 at **The Applicant's Response to Actions – ISH7 – Other Environmental Matters** (Doc Ref. 10.26.3).]
- 3.1.14 The ExA asked the Applicant to explain to what extent the Applicant is reliant on UK Border Force for immigration operations and to meet its own service standards.
- 3.1.15 The Applicant confirmed it would respond in writing.
- 3.1.16 **[Post hearing note:** Please see the response to Action Point 5 at **The Applicant's Response to Actions – ISH7 – Other Environmental Matters** (Doc Ref. 10.26.3).]
- 3.1.17 The ExA referred to EasyJet's relevant representation [[RR-1256](#)], which noted that critical terminal infrastructure is "*full or close to full during the morning peak hours*", which "*makes it impossible to add more aircraft or up gauge to larger aircraft with more seats*", and which also commented on delays at peak times for passenger going through security. The ExA asked the Applicant to explain how this aligns with response to GEN1.17 which does not propose any terminal facility upgrades.
- 3.1.18 The Applicant confirmed it would respond in detail in writing. The Applicant noted the general principle that applies is that as far as the FB is concerned, the airport has means to manage the movement of more passengers through the airport. It was further noted that the increase in peak time throughput in the FB scenario is modest. Peak slots have been declared and they do not exceed the current maximum of 55 mppa, so any growth that takes place will be beyond the peak hour. This means there will not be any significant increase in pressure on the peak use of terminal facilities. The Applicant further noted there was not a simple correlation between 10% increase in arrivals and needing a 10% increase in airport facilities.
- 3.1.19 **[Post hearing note:** Please see the response to Action Point 6 at **The Applicant's Response to Actions – ISH7 – Other Environmental Matters** (Doc Ref. 10.26.3).]
- 3.1.20 The ExA quoted the following sections of the Applicant's Response to the Local Impact Reports ("**LIR**") - Appendix A - Note on the Principle of Development [[REP3-079](#)]:

*"4.1.3 The Applicant does not fully understand the case being made by the JLAs – to the extent that the Airport is demonstrably busy to the point where delays are arising and there is a lack of resilience, these are reasons to support the NRP.*

*4.1.4 Matters affecting the performance of the airport may have been misunderstood. Whilst the way in which these matters are characterised and the detail of several of these assertions are not agreed – and are responded to further below – they do at least amount to a recognition that the airport is under pressure at peak times and that there would be benefit in providing more capacity and resilience."*

*"4.1.9 Gatwick has taken the leadership position in regard on time performance working with airlines, their contracted 3rd parties and airspace stakeholders in the interest of improving the Gatwick passengers' punctual journey. As an example, London Gatwick is trialling 'smart stands' with the support of airlines to improve aircraft turn performance."*

The ExA asked how these responses fit with the baseline case that passenger numbers will increase without requisite terminal upgrades.

- 3.1.21 The Applicant responded that these responses related to comments from the Joint Local Authorities ("**JLAs**") relating to the performance of the airfield and the ability to achieve airside flight movements. The broad point being made in these paragraphs was that these matters actually improve the case for the Project, where the JLAs have concerns. The Applicant explained that it did not understand this point to relate to terminal capacity issues, albeit that when considering the impact on terminal capacity, the scope for growth is greater outside the peak periods, which has some similarity to the wider issue of growth in airside capacity.
- 3.1.22 In paragraph 6.1.30 of [\[REP3-079\]](#), the 3<sup>rd</sup> bullet point states that: *"To the extent the Project is not approved, the avenues through which the Airport and its airline customers can seek to grow and satisfy unmet demand will be more limited and this will increase the focus on those avenues – such as improved seasonality – which are available. Under these circumstances, the seasonal price signals offered under the published tariff and bilateral agreements may be stronger, which would, in turn, support peak spreading."* The ExA asked the Applicant to elaborate on this statement.
- 3.1.23 The Applicant confirmed it would respond in writing.

- 3.1.24 **[Post hearing note:** Please see the response to Action Point 7 at **The Applicant's Response to Actions – ISH7 – Other Environmental Matters** (Doc Ref. 10.26.3).]
- 3.1.25 Paragraph 6.1.32 of [\[REP3-079\]](#) (copied below) refers to the potential for some operations to move from Heathrow Airport to Gatwick. The ExA asked the Applicant to explain how this statement relates to the Applicant's proposals or predictions about peak spreading.
- "The Airport has had recent success in attracting a number of services from carriers which also operate at Heathrow or who have decided to transfer their services from Heathrow to Gatwick. Airlines which have launched services from Gatwick over the last year and also operate from Heathrow include Lufthansa, Delta, Air India, Saudia, Ethiopian Airlines, Air China, China Southern, China Eastern, Azerbaijan Airlines and Singapore Airlines (from June 2024). In addition, Air Mauritius took the strategic decision to relocate its services from Heathrow to Gatwick with the first flight from Gatwick in October 2023. The Applicant acknowledges that capacity constraints at Heathrow may be a relevant consideration for some of these airlines but even if this is the case, these new services demonstrate the Airport's success in competing with the other London airports."*
- 3.1.26 Submissions were made by the JLAs relating to concerns raised by York Aviation regarding the Applicant's forecasts of peak spreading and off-season growth (seasonal peak spreading), as set out in [\[REP3-123\]](#).
- 3.1.27 In response, the Applicant confirmed that discussions with the JLAs are ongoing, and a detailed response will be provided at Deadline 4 (see paragraph 3.1.31 below).
- 3.1.28 The Applicant made the broad points that it is confident in its forecasts, which are lower than the historic growth recently achieved by the airport. It was further explained that the FB growth assumptions are not mainly attributable to peak growth, rather they are attributable to a number of other factors. Peak spreading has been a consistent feature of the airport's operations recently, and this trend is expected to continue. In relation to average increases in aircraft sizes, the forecast which is included in the FB is less than half of historic growth rates.
- 3.1.29 The Applicant further noted that its Deadline 3 submissions ([\[REP3-079\]](#) at paragraph 4.1.16) highlighted the possibility of new airline entrants, none of whom have concerns about capacity constraints. It was noted that the capacity team at the airport are confident that they can manage capacity; at present they successfully manage the busiest single runway airport in the world. The Applicant

further noted that there have been movements of airlines and capacity from Heathrow to Gatwick recently. Demand for slots at Gatwick is strong and, whilst the JLAs express concern about delay at the airport, that has not been a concern to new entrants.

- 3.1.30 The Applicant noted that its Deadline 1 submissions provided modelling information [[REP1-054](#)], which showed significantly less delay than the JLAs may have understood to be the modelled delays to date. The JLAs have not yet had a full opportunity to assess that information, although there have been recent, productive discussions. The modelling more accurately replicates the position at the airport and the Applicant considers the modelling case to be conclusive in correlating with current performance and demonstrating reduced delay into the future, particularly in the NRP scenario. The Applicant looked forward to a response from the JLAs once they have been able to fully consider the further modelling provided at Deadline 1.
- 3.1.31 **[Post hearing note: Please see the response to Action Points 8 and 9 at [The Applicant's Response to Actions – ISH7 – Other Environmental Matters](#) (Doc Ref. 10.26.3).]**
- 3.1.32 The JLAs made submissions requesting sensitivity testing using lower assumptions for passengers per annum growth (of 50-55 mppa by 2047) to create a different FB scenario on which to assess the effects of the Project. The JLAs requested the provision of without prejudice environmental information on the differential effects of the Project using this different FB modelling on relevant environmental topics (referencing transport, noise and air quality).
- 3.1.33 The ExA referred to paragraph 5.1.3 in [[REP3-079](#)]: "*The authorities make the point that, if the baseline capacity were lower than the Applicant states, the impacts from the NRP would be greater. It should also be recognised, however, that if the authorities were right about baseline capacity, the need for the NRP would be even greater, as would its benefits.*" and asked whether any analysis or sensitivity testing for a lower baseline could be provided.
- 3.1.34 The Applicant responded that, concerning FB forecasts themselves, the Applicant maintains the position that these are robust as they are based on robust assumptions. As the Applicant has explained (see **ES Chapter 4: Existing Site and Operation** [[APP-029](#)] Section 4.3 Predicted Future Changes in Passenger and Cargo Throughput at Gatwick, **ES Appendix 4.3.1 Forecast Data Book** [[APP-075](#)], **The Applicant's Written Summary of Oral Submissions for ISH1: Case for the Proposed Development** [[REP1-056](#)] and **Technical Note on the Future Baseline** [[REP1-047](#)] which refers to the **Airfield Capacity Study** [[REP1-053](#) and [REP 1-054](#)] as well as the **Needs Case**



**Technical Appendix [REP 1-052]**), it has confidence in forecasts. Those documents confirm that the forecast is not inconsistent with what Gatwick has historically achieved in recent years (indeed the forecasts represent more modest growth than the airport has achieved recently). Growth in the future baseline is mainly attributable to changes in aircraft size (i.e. larger aircraft), load factors (fuller aircraft) and peak spreading. In so far as reservations have been expressed about the extent of peak spreading, this has been a consistent feature of Gatwick operations, and just as the figures show a decreasing ratio between the peak month and year-round average up to 2019, forecasts maintain that decreasing trend going forward. It is a well-established trend and entirely reasonable to assume it will continue as the Applicant has assessed. In relation to aircraft sizes, growth achieved in forecasts is at less than half the rate of historical trends at the airport. In relation to load factors, assumed growth in seat occupancy between 2019 and 2049 was comparable to growth in nine years up to 2019.

- 3.1.35 The Applicant did not therefore accept that any uncertainty in forecasts, in particular concerns from JLAs that they have been overestimated, is such that they call into question the robust assumptions it has made. As mentioned previously, it is not appropriate to suggest that further sensitivity work should be undertaken when there is no adequately substantiated rationale to do so; indeed otherwise the potential for multiple unjustified sensitivities would arise.
- 3.1.36 The Applicant further noted that the JLAs appear to have an in principle issue with the FB, and confirmed that the Applicant does not consider it proportionate to revisit the assessments set out in the Environmental Statement. Furthermore, it is not clear to the Applicant the extent to which the request from the JLAs for sensitivity testing to be undertaken would have a material effect in EIA terms on the conclusions reached in the Environmental Statement. Impacts affecting the FB might also affect the Project, meaning an increased delta between the two scenarios might not exist. The Applicant also noted that in the alternative, with a lower FB forecast, the Project would bring greater benefits than have been assumed to date.
- 3.1.37 The Applicant noted that in any event, mitigation including the **Noise Envelope [APP-177]**, **Noise Insulation Scheme** (Doc Ref. 5.3 v2) , the **Carbon Action Plan [APP-091]** and the **Surface Access Commitments [REP3-028]**, all relate to mitigation in principal topic areas that avoids or reduces adverse effects resulting from the operation of the whole airport with the Project in place.
- 3.1.38 It was not therefore clear where any concerns of the JLAs led in terms of their position on whether the Project was necessary or acceptable.

- 3.1.39 The Applicant also noted that the concern of the JLAs relating to the FB forecasts seems to have shifted during the course of the Examination from being concerns about the capacity of the airport, to concerns about whether the demand actually exists. The Applicant also noted that the JLA's assumption of 50-55 mppa as an alternative FB needs to be substantiated. That estimate was the estimate for Gatwick used by York Aviation at the Luton DCO examination and was given there without the benefit of the very extensive information that the Applicant has provided here. The basis for it has not been provided yet and must be in order for any meaningful sensitivity testing to be undertaken.
- 3.1.40 **[Post hearing note: Please see the response to Action Point 10 in *The Applicant's Response to Actions ISH7: Other Environmental Matters* (Doc Ref. 10.26.3).]**
- 3.1.41 The ExA noted that the ES Chapter 12: Traffic and Transport [[APP-037](#)] has assessed a 13 mppa increase in different assessment years which is a comparison of the FB scenario and the "with Project" scenario (see paragraphs 12.9.99 and 12.9.147), which is a different basis of assessment compared with assessing the full effect of the Project. Taking this as the basis of the assessment, using a lower FB would potentially have an effect on the conclusions of Chapter 12, as the effect of the Project would be greater.
- 3.1.42 The Applicant responded that mitigation is being provided for the effects of the whole Project, where a need for mitigation has been identified in the EIA. This means that, when looking at the residual effects as a result of the Project, this takes into account traffic from the whole airport. As such, providing a FB sensitivity analysis would not aid the understanding of the effectiveness of the mitigation proposed. The Applicant accepted that applying a different FB scenario may result in points of difference in some effects in the ES, but did not consider that this would not result in different mitigation.
- 3.1.43 In response to a suggestion by the JLAs that it was important for the starting point to be correctly identified in EIA terms, the Applicant confirmed that it had carried out the task of properly identifying the FB in the environmental statement, and that remained so despite any reservations being expressed by the JLAs. It was not for the Applicant to conduct alternative FB assessments simply because the JLAs had asserted they had unsubstantiated reservations over some of the assumptions. The Applicant repeated its observation that ultimately if the mitigation in these areas was effective, it was unclear where the concerns of the JLAs would arise in respect of these important aspects of the proposals and they had not established that the exercise they were contemplating would materially alter the outcome of the assessment work.

- 3.1.44 The Applicant reserved its position to comment further in writing, and agreed to take away an action to discuss this matter further with the JLAs and to report the same to the Examination. The Applicant agreed to consider what information it could provide to the Examination to build confidence in the Applicant's FB forecasting. It was also noted that it would be necessary to consider the scope of that information, and that any response would need to be proportionate.
- 3.1.45 The ExA noted that the Applicant has stated in ISH6 (at Agenda Item 5) that it did not consider "fall-back" to be an accurate way of describing the FB scenario relative to the Project, and asked for this to be elaborated on.
- 3.1.46 The Applicant responded that it depends what is meant by "fall-back", as explained in ISH6. If it is taken to mean a choice between two implementable projects (i.e. the context in which the term is commonly used in the planning word), this is not what the Applicant considers the FB to be. If the Project were not to be consented, then the Applicant would be relying on its existing operations. In this case, there is no alternative consent that it would put forward, as the FB is how the airport would grow without the Project and without any further planning permission being necessary. It was further noted that there is no mutual exclusivity between the FB and "with Project" worlds – the Project will build on the FB scenario. Finally, the Applicant noted that use of the term "fall back" leads one away from asking the fundamental question of what the baseline should be for the purposes of assessment in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("**EIA Regulations**") - in particular its evolution without the implementation of the proposed development. The Applicant reiterated that the correct methodology for assessment, in accordance with the EIA Regulations, is to assess the "with Project" scenario against the FB scenario.
- 3.1.47 The ExA referred to the Applicant's response to GEN.1.24 [REP3-091] where it was explained that the FB did not include any additional hotel or office provision and also that "*it is forecast that further hotels will be required*" as airport passenger numbers grow in the baseline and as a result of the Project. The ExA asked the Applicant to confirm if those extra hotels would be required for both the FB and "with Project" scenarios, and asked if they were sufficient to cover demand under the "with Project" scenario?
- 3.1.48 The Applicant responded that, as the airport grows, there will be increased demand for hotels. However, the absence of hotels on the airport site does not impact the FB and constrain it, as the Applicant's case is that the airport will grow regardless of whether the hotels exist specifically on the airport or not. The airport is also served by the hotel market in the local area. Nonetheless, the

Applicant considered it prudent to include hotels in the application for the Project, as it has identified that an increase in demand for hotels will arise from the NRP project itself.

- 3.1.49 The ExA referred to the Applicant's response to GEN1.29 [REP3-091] relating to the impacts of Heathrow constructing a third runway ("R3"), which states that "Figure 1.1 of the Technical Note on the Future Baseline [REP1-047] refers to the Gatwick baseline, but this does not include a third runway at Heathrow (LHR R3)". The ExA asked the Applicant to confirm why a third runway at Heathrow would affect Project demand forecasts but not forecast demand under the FB scenario.
- 3.1.50 The Applicant responded that the assessment of the impact of R3 has not been done as part of the FB, as this was done as part of the cumulative assessment sensitivity testing. In accordance with the EIA Regulations, if there is a scheme in contemplation in the EIA sense (a "**cumulative scheme**"), this should be included in the cumulative assessment rather than as part of the FB, otherwise the assessment of potential effects is duplicated. This is because the FB considers the growth of Gatwick, following which the effects of the Project and then cumulative schemes which may follow the implementation of the Project on this baseline are considered. This approach was consistent with the requirements of the EIA Regulations.
- 3.1.51 **[Post-hearing note:** for completeness, Annex 4 to the **Forecast Data Book [APP-075]** also includes an analysis of the potential impact of Heathrow R3 on the future baseline and NRP cases.]
- 3.1.52 The ExA referred to the Applicant's response to GEN1.27 [REP3-091], which acknowledged that the 820 car parking spaces that were to be delivered under the Hilton Hotel multi-storey car park planning permission no longer form part of the FB as the permission has lapsed. The ExA asked the Applicant to confirm if the Transport Assessment and the Car Parking Strategy [REP1-051] need to be updated as a result.
- 3.1.53 The Applicant confirmed it would respond in writing.
- 3.1.54 **[Post hearing note:** Please see the response to Action Point 11 in **The Applicant's Response to Actions ISH 7: Other Environmental Matters** (Doc Ref. 10.26.3).]
- 3.1.55 The ExA raised the Applicant's response to GEN1.28 [REP3-091], which noted that parking supply is an important factor affecting mode choice and that 2,500 net additional robotic parking spaces are to be delivered through permitted



development rights (as was noted in ISH4 [REP1-059]). The ExA asked the Applicant to confirm how, if the SoS was minded to remove these rights, the Applicant would factor that into its Car Parking Strategy.

- 3.1.56 The Applicant responded that it would resist the proposition that PD rights should be removed, but confirmed further detail would be provided in writing.
- 3.1.57 **[Post hearing note:** Please see the response to Action Point 12 in **The Applicant's Response to Actions ISH 7: Other Environmental Matters** (Doc Ref. 10.26.3).]

## 4 Agenda Item 4: Water and Flooding

### 4.1. The ExA would like to fully understand the outstanding concerns relating to:

- **Flood modelling;**
- **Wastewater treatment; and**
- **Water supply.**

#### **Flood modelling**

- 4.1.1 The ExA asked for comments from the Environment Agency ("EA") and the Lead Local Flood Authority ("LLFA") regarding any outstanding concerns relating to flood risk modelling and the Applicant's assessment.
- 4.1.2 The EA noted its review of flood risk modelling provided by the Applicant was ongoing, so reserved its position on whether the proposed fluvial flood risk mitigation was sufficient. The JLAs (on behalf of the LLFA) raised concerns relating to surface water flooding.
- 4.1.3 The Applicant responded that the EA's comments on the "with-scheme" modelling were received in February 2024. Since then, the Applicant has been reviewing these and is liaising with the EA to provide comments. It was noted that the baseline flood risk modelling was accepted by the EA in August 2023.
- 4.1.4 The Applicant then responded to comments made by the LLFA relating to the choice of 40-year lifetime for modelling the flood risk for some aspects of the airfield infrastructure, concerns about the rainfall data used in the Applicant's modelling, the hydraulic modelling used for the surface water flood risk assessment, and the Applicant's justification for the choice of lifetime for the various elements of the Project.
- 4.1.5 The Applicant noted that the assumption of a 40-year lifetime is suitable for the assessment, given the changes to the airfield layout anticipated over the next

decades and that such a timescale extends beyond the final assessment year for the Project (2047).

- 4.1.6 Due to the variation in design life in respect of fluvial flood risk, the Applicant has adopted a +12% allowance for climate change for airfield elements and +20% for the highways elements of the Project. However, the fluvial mitigation strategy is holistic, in effect ignoring the 40-year lifetime and mitigating the whole Project for a 100-year lifetime, as a result the adoption of a shorter design-life for airfield elements is of little consequence.
- 4.1.7 The Applicant confirmed that a draft flood compensation delivery plan will be shared with the EA for comment. It will set out how the fluvial mitigations will align with the various works required for the Project. This plan will provide more detail of the operation of the mitigation measures.
- 4.1.8 In response to concerns raised by the LLFA relating to surface water runoff, the Applicant noted that drainage models have been built for the airfield and the highways works to inform the Flood Risk Assessment ("FRA") [[AS-078](#)], the airfield surface water drainage assessment assumes a +25% allowance for climate change in accordance with EA guidance for a 40-year design life. A sensitivity test of a +40% allowance (equivalent to a 100-year design life) has also been undertaken which has not identified any additional effects. The highways drainage design mitigation strategy adopts a +40% rainfall intensity allowance for climate change in accordance with EA guidance.
- 4.1.9 In response to comments raised relating to the drainage modelling undertaken for the Project, the Applicant explained that the airfield drainage model is based on sub-catchments that reflect the airfield catchments. The airfield drainage system drains to Ponds A, D, E, M and Dog Kennel Pond which drain to the River Mole or the Gatwick Stream. The Applicant explained that more detail could be provided from the model, but as the critical point is the final output to the receiving watercourses as reported in the FRA, it is not clear what benefit there would be in providing this additional information. The highways drainage strategy has been informed by hydraulic modelling as reported in Annex 1 of the **FRA** [[APP-148](#)]. Models of each drainage catchment were developed and used to assess the impact of the scheme and design mitigation measures where required.
- 4.1.10 **[Post hearing note:** The Applicant is liaising directly with the JLAs (as the LLFA) to provide further information about post-development run-off rates.]
- 4.1.11 In response to comments raised relating to the need for a new pumping station to be constructed as a result of the Project, the Applicant explained the reason why

this was required. As the northern runway is moving north, this creates a knock-on effect as the Juliet taxiway also moves onto the footprint of Pond A, which therefore needs to be removed. Due to spatial constraints, a pumping station is required to replace Pond A, to then drain the western end of the airfield sending it to the Pond M catchment and then ultimately to Pond D. This option was chosen to avoid the need for a drainage solution offsite and due to the safeguarding constraints of having an open water body in close proximity to aircraft. The Applicant confirmed that it operates a number of existing pumping stations onsite which it maintains and therefore does not foresee any issues with maintaining the new pumping station.

- 4.1.12 Rusper Parish Council asked whether the impact of wastewater flows from new housing developments along the River Mole had been factored into the flood risk modelling for the Project.
- 4.1.13 The Applicant responded that it has assumed in the modelling for the River Mole that housing developments will not change the peak flow, as all developments are expected to mitigate their own effects in accordance with national planning policy. This is the standard approach that developers apply to modelling the impacts of their own projects.
- 4.1.14 CAGNE referred to their Deadline 3 submission response to ExQ1 [[REP3-113](#)], and raised a question relating to the functioning of the new reed bed flood risk mitigation proposed by the Applicant.
- 4.1.15 The Applicant explained that the reed beds would take flow from the de-icer long-term storage lagoons, which would include contaminated water as a result of the application of de-icer on the airfield. The Applicant confirmed that the reed beds have been designed for a constant inflow of 100l/s which would be regulated via the pumped inflow infrastructure from the lagoons. The reed beds would then discharge to the Gatwick Stream at the same regulated rate. This would require a new discharge consent from the EA, which would specify the water quality standards and flow rates the reed bed would need to achieve. The Applicant further confirmed that in the unlikely event of any failure of the reed bed, the design includes built in redundancy as well as a mechanism to send flows back to the long-term storage lagoons for further treatment.
- 4.1.16 Runoff from the airfield that is of insufficient quality to discharge directly to the River Mole is currently pumped to the long-term storage lagoons for subsequent treatment. Prior to pumping it passes through an API interceptor which removes silt. Any remaining silt would settle out in the 320,000m<sup>3</sup> long-term storage lagoons. This process would continue under this proposal but instead of final treatment by Thames Water's Crawley STW, treatment would be via a new

nature-based active treatment system. Runoff would continue to be from the airfield only and would not include runoff from the surface access highways improvement works.

- 4.1.17 The inflow from the lagoons would be limited to 100l/s where it would be treated prior to discharge to the Gatwick Stream. The inflow is limited and levelled (attenuated) via the storage provided by the lagoons to avoid overwhelming the treatment system. The outflow from the treatment system would be discharged to the Gatwick Stream via an existing overflow pipe from the lagoons. If the effluent is of insufficient quality, it would be pumped back to the lagoons and passed through the treatment system again for further treatment. The discharge will require a new discharge consent from the EA and the detailed Operating Technique consented by the EA will stipulate the minimum quality the effluent needs to meet to be discharged to the Gatwick Stream. This is anticipated by Gatwick to be more stringent than the existing discharge consent for Crawley STW. The Operating Technique will also stipulate how the system must be maintained to ensure it remains effective.
- 4.1.18 The size of the reed beds incorporates redundancy, the system would still be able to meet the water quality treatment criteria if one of the three treatment beds was out of action (e.g. for maintenance).
- 4.1.19 Aerated wetlands are attached growth biological reactors designed for accelerated degradation of organic compounds such as de-icing chemicals. Naturally occurring bacteria attach to the surfaces of the gravel media forming biofilms. The wastewater is distributed across the surface area of the beds subsequently percolating vertically down through the saturated gravel media. Retention within the media provides sufficient contact between the contaminants and the biofilms, resulting in biological contaminant degradation and reduced concentrations of organic matter (BOD<sub>5</sub>, COD & TOC) in the treated effluent. The degradation is more efficient under aerobic conditions and the Forced Bed Aeration (FBA™) system will be designed to evenly distribute oxygen across the entire working volume of media to maintain aerobic conditions when necessary.
- 4.1.20 The reed beds will be lined to prevent any ingress of groundwater or exfiltration of potentially untreated or partially treated effluent into the surrounding ground.
- 4.1.21 This technology is tried and tested and is used at Heathrow Airport to treat de-icer contaminated runoff for over 10 years.]



- 4.1.22 The JLA asked about the modelling and how residual flood risk is being managed for both fluvial and pluvial flooding.
- 4.1.23 The Applicant responded that it considers the choice of a 40-year modelling lifetime to be appropriate for the airfield, albeit the mitigation strategy is designed for a 100-year scenario plus an allowance for climate change. The **FRA** [\[AS-078\]](#) includes an assessment of a Credible Maximum Scenario for fluvial flood risk in accordance with Environment Agency guidance for a more extreme event which does not give rise to additional significant environmental effects.
- 4.1.24 National Highways ("**NH**") made detailed submissions on the following two points:
- a. NH raised concerns that the Applicant had not complied with the requirements of the Design Manual for Roads and Bridges ("**DMRB**"), in respect of the FRA and proposed mitigation, asserting that it had not seen evidence that the FRA has been carried out in accordance with CD-356.
  - b. NH also raised concerns relating to the construction traffic modelling.
- 4.1.25 **[Post hearing note:** The Applicant is liaising directly with NH to understand the detail of the comments raised and to provide responses.]
- 4.1.26 The Gatwick Area Conservation Campaign raised concerns that GAL would be discharging increased levels of surface water into the River Mole, which could have downstream flood risk implications.
- 4.1.27 The Applicant responded by explaining that the emergency discharges of surface water from the airport end up in Pond D. This operates to simulate greenfield runoff rates in normal circumstances. When the Pond D level reaches a certain point, the EA permit the airport to increase the amount that can be discharged into the River, however, the permit has an upper discharge limit which restricts how much can be discharged into the River Mole. The Applicant confirmed that above that level, the surface water would back up in the airport itself.
- 4.1.28 In response to comments made by the ExA relating to the environmental permitting system, the Applicant noted it had made contact with the EA's national permitting team in respect of a new permit for discharge into the reed beds.

### **Wastewater treatment**

- 4.1.29 In response to questions from the ExA, Thames Water Utilities Limited ("**TWUL**") confirmed network modelling would be available by early 2025 which would enable an understanding of the capacity in the network. It was noted that

preliminary network and treatment works modelling is being undertaken, as explained further in TWUL's response to ExQ1 WE.1.8 [REP3-149].

- 4.1.30 In response the Applicant confirmed that its understanding was that the assessment of the impact of the Project on the local network and on the local catchment wastewater treatment works ("**WWTW**") at Crawley and Horley would be completed in two phases. The first phase being an assessment based on survey data and modelling undertaken by the Applicant for the Environmental Statement, which would provide an initial assessment. This is due to be provided to the Applicant in May or June 2024. The Applicant then noted its understanding that the second phase would follow and was expected to be completed following the close of the examination. The Applicant noted its understanding that, following completion of the phase 1 exercise, TWUL would be in a position to confirm its initial position on whether the Project would result in the need for TWUL to undertake capacity upgrades, subject to the results of phase 2. The Applicant requested confirmation from TWUL that phase 1 would be completed by the end of May.
- 4.1.31 The Applicant further noted the suggestion from TWUL in its Written Representation [REP1-103] (paragraph 2.3) that a requirement be included in the DCO specifying that no additional foul water flows from the Project can be discharged until the modelled flows have been agreed by TWUL and the network upgrades implemented. The Applicant confirmed that it did not accept this.
- 4.1.32 The Applicant confirmed that it will follow progress of the phase 1 work being undertaken by TWUL and will update the ExA as soon as possible. The Applicant further noted that discussions had been ongoing with TWUL on the issue of wastewater flows from the Project since 2019. The Applicant noted it has shared survey work and predicted capacity figures, which TWUL used to undertake their own surveys.
- 4.1.33 CAGNE made submissions highlighting a concern about the wastewater network capacity implications of the Project and the potential for the Applicant to deliver an onsite WWTW, absent which it recommended a phasing requirement be included in the DCO, precluding the delivery of new airport capacity under the Project until the network capacity issues are also resolved.
- 4.1.34 The Applicant responded to reiterate that it would not be appropriate for a requirement to be imposed on the DCO precluding development prior to the capacity issues being resolved. The Applicant noted the legal duty of TWUL, as the relevant sewerage undertaker for the area in which the airport is located, to treat wastewater flows.

- 4.1.35 In response to the comments made by CAGNE relating to a potential change to the application to include a wastewater treatment facility (which they said they had requested from the outset), the Applicant confirmed that it is considering this and confirmed that notification of any change would be made to the ExA as soon as possible.
- 4.1.36 **[Post hearing note:** The Applicant submitted its **Change Notification Report [AS-146]** in respect of including an on-site wastewater treatment facility and associated works in the Application to the ExA on 7 May 2024.]

### **Water supply**

- 4.1.37 The ExA referred to the Applicant's response to ExQ1 WE1.9 [REP3-105], and noted that Sutton and East Surrey Water ("**SES Water**") had not responded to the ExA's question on whether SES Water's assessment of the impact of the Project on water supply has been completed.
- 4.1.38 The Applicant responded that, in direct correspondence, SES Water had said that they will be able to meet their statutory duty to supply the water required for the Project, as was noted in the Applicant's response to ExQ1 WE.1.9 [REP3-105].
- 4.1.39 **[Post hearing note:** Please see the response to Action Point 14 at The **Applicant's Response to Actions – ISH7 – Other Environmental Matters** (Doc Ref. 10.26.3).]
- 4.1.40 The JLAs noted they did not consider the Applicant had done enough to reduce water consumption on the airport so as to be compliant with policies ENV6 and ENV9 and emerging policies SDC1 and SDC3 in the Crawley Local Plan and emerging Crawley Local Plan respectively.
- 4.1.41 The Applicant responded that it is aware of local supply constraints, and noted its commitment to design principle BF2 that for the detailed design stage the Project will "*consider measures to reduce water use and increase re-use across new buildings*": **7.3 Design and Access Statement Appendix 1 – Design Principles – v3 [REP3-056]**. The Applicant further noted that it is not located in a water supply zone that is constrained due to nutrient neutrality issues, as it receives its water supply from SES Water's Medway catchment.

## 5 Agenda Item 5: Air Quality

### 5.1. The Applicant will be asked questions relating to air quality, including the following areas:

**Construction phase including dust, odour, and Non-Road Mobile Machinery (NRMM); and**

**Operation phase including modelling and assessment out to 2047, Ultrafine particles (UFP), odour, and Air Quality Action Plans**

- 5.1.1 The ExA sought to understand details in reporting results at specific points, compared with contours presented, particularly in relation to the contours in Figure 13.1.4 in the **ES – Air Quality Figures** [APP-066], and Table 2.1 in **ES Appendix 13.9.1 Air Quality Results Tables and Figures** [APP-166].
- 5.1.2 The Applicant explained that Table 2.1 of ES Appendix 13.9.1 Air Quality Results Tables and Figures has the precise and accurate record of data. The Applicant clarified the tables should be used to see the exact concentrations and noted the example of R\_357 as discussed, shows that due to model interpolation the contours should not be used to read off exact results for each receptor location.
- 5.1.3 In response to the ExA's query as to whether the contour maps should be ignored, the Applicant responded that the contour maps should not be ignored, but rather should be read as a useful tool alongside the precise data in Table 2.1. The Applicant noted that this slight perceived discrepancy does not affect any aspect of the assessment, which was carried out on the basis of the information in the tables.
- 5.1.4 The ExA asked that the Applicant to provide further information on the interaction between the tables and the figures.
- 5.1.5 CAGNE raised concerns about the levels of nitrogen oxides and queried how this has been considered in the health assessment.
- 5.1.6 In response, the Applicant confirmed that the **ES Chapter 18: Health and Wellbeing** [APP-043] assesses non-threshold effects of air pollutants, including PM2.5 and NO<sub>2</sub>, and the assessment concluded that there would be a minor, not significant adverse effect.
- 5.1.7 In response to a question from CAGNE relating to whether the receptor points in Table 2.1 were included in the results before or after the interpolation took place, the Applicant proposed to include clarification on this point in writing, within the response it was already due to provide.



- 5.1.8 The Applicant also acknowledged comments from the JLAs, requesting better signposting of the linkage between the results in the ES appendices, the relevant figures, and then to the ES chapters themselves, and noted this was being dealt with through ongoing discussions with the JLAs.
- 5.1.9 **[Post hearing note:** Please see the response to Action Point 15 at The Applicant's Response to Actions – ISH7 – Other Environmental Matters (Doc Ref. 10.26.3).]
- 5.1.10 The ExA asked the Applicant to summarise the proposed approach to dust management during the construction phase.
- 5.1.11 The Applicant explained that it has followed the Institute of Air Quality Management ("IAQM") guidance, as was available at the time the assessment was carried out. The Applicant further noted that the new version of the IAQM guidance is less conservative than the version that was applied in the assessment, so the Applicant is confident that it applied best practice when setting out the mitigation within the CoCP [\[REP1-021\]](#) to be secured under the Draft DCO [\[REP3-006\]](#).
- 5.1.12 In response to comments from the JLAs requesting more detail in the form of outline dust management plans for the specific work packages which will require dust management plans, the Applicant explained that these issues are still under discussion with the JLAs.
- 5.1.13 The Applicant's current position is that this level of detail and the key mitigation proposed should be provided at detailed design stage, because the detailed packages of work are yet to be developed. A draft Construction Dust Management Plan (CDMP) has been shared with the local authorities for comment on 26<sup>th</sup> March. In response to comments from the JLAs, the draft CDMP will be updated to include a summary of the higher risk packages of work, to be submitted at Deadline 5, but the detail relating to these specific sites and works will appropriately be provided at the detailed design phase. The mitigation secured through the CoCP [\[REP1-021\]](#) would be appropriate for any site or type of development.
- 5.1.14 The ExA asked generally about the consideration of odour management during construction.
- 5.1.15 The Applicant responded that it expected there to be no significant odour effects, and no expected excavation of putrescible waste. However, the CoCP [\[REP1-021\]](#) does include mitigation that would be in place to manage any odour should such issues arise.

- 5.1.16 The ExA noted that the Applicant is committed to at least Euro Stage V for Diesel Powered NRMM, and asked whether the Applicant could go further.
- 5.1.17 The Applicant confirmed the Euro Stage V commitment, noting that this is to meet the requirements set by the GLA (Greater London Authority) at the moment, and considered it sufficient at this point.
- 5.1.18 In response to the JLAs noting the caveat in the CoCP that the Applicant will achieve Stage V "where applicable", the Applicant explained that the drafting was being further reviewed, and the next version of the CoCP to be submitted into the Examination at Deadline 4 would include an update to this provision.
- 5.1.19 The ExA asked whether the Applicant had undertaken the same forecast for 2047 as shown for 2038, either in the tabular form or the map form.
- 5.1.20 The Applicant responded that the 2047 assessment is not provided in tabular or map format, as it was not considered proportionate to be carrying out a modelling assessment of 2047. The Applicant has provided an assessment of 2047 using a semi-quantitative approach, with an emissions inventory and by looking at the explicitly modelled year 2038. At maximum concentration and project change locations, concentrations are below the relevant air quality standards and the change in concentrations are well below the project changes required for a significant effect. Considering this, together with changes in emissions predicted between 2038 and 2047, it is concluded that the 2047 year is not at risk of resulting in a significant impact to air quality. In addition, the assessment applies conservative assumptions, this together with national efforts to reduce emissions, further improvements in air quality are expected compared to those predicted.
- 5.1.21 The ExA noted that the above conclusion is an assumption, based on its assumption that the 2047 fleet will be all new generation aircraft. The ExA asked what evidence the Applicant had to support this assumption about the fleet transition.
- 5.1.22 In response to the JLAs contention that paragraph 5.33 of the Airports National Policy Statement ("**ANPS**") requires that aircraft emissions modelling for 2047 be undertaken, the Applicant explained that it did not agree, and that the ES assesses 2047, in line with the requirements in the ANPS.
- 5.1.23 In response to the ExA's further question asking whether the Applicant could not undertake the modelling, or would not, the Applicant explained that the modelling could be carried out, but that there must be a proportionate approach to the modelling undertaken, and it did not consider it to be proportionate in this case. The Applicant noted that its **Supporting Air Quality Technical Notes to**

**Statements of Common Ground** [\[REP1-050\]](#) provides additional information on the 2047 assessment and why the quantitative assessment that has been carried out, not qualitative is appropriate.

- 5.1.24 **[Post hearing note:** Please see the response to Action Point 16 at **The Applicant's Response to Actions – ISH7 – Other Environmental Matters** (Doc Ref. 10.26.3).]
- 5.1.25 The ExA asked whether the Applicant considered that changes to the air quality standards could affect the conclusions of Table 13.13.1 'Summary of effects' in ES Chapter 13: Air Quality [APP-038].
- 5.1.26 The Applicant responded that its assessment was entirely appropriate, as it has been carried out against current legislation, and that it should not be required to assess against anything that is 'not inconceivable'. Furthermore, the Applicant noted that its assessment included consideration of non-threshold effects, and inbuilt conservatism. The Applicant noted consideration of monitoring also helps with this point and noted that the current concentrations at LGW3 air quality monitoring site at the end of the Main Runway demonstrates that concentrations are already less than the 2040 PM2.5 target of 10µg/m<sup>3</sup> and WHO NO<sub>2</sub> target of 20µg/m<sup>3</sup>.
- 5.1.27 **[Post hearing note:** Please see the response to Action Point 17 at **The Applicant's Response to Actions – ISH7 – Other Environmental Matters** (Doc Ref. 10.26.3).]
- 5.1.28 CAGNE noted its request for the Applicant to provide the technical data behind its air quality modelling, and further queried what impact the lack of verification of the PM2.5 and ammonia modelling is likely to have on the modelling results.
- 5.1.29 In response, the Applicant explained that it has already responded to CAGNE that it was content to provide the modelling data and would arrange for this to be provided shortly. In response to the substantive question regarding verification, the Applicant noted that it could provide a response to this as part of the wider discussions with CAGNE once they have seen the data, or in response to any submissions they might make on the matter.
- 5.1.30 The JLAs noted that they are not aligned with the Applicant on the approach to ultrafine particles, noting that while there are no UK standards, there are WHO guidelines, and that more needs to be done to monitor the levels of these particles.
- 5.1.31 The Applicant responded that there are no standards against which to carry out an assessment, nor are there established methodologies for carrying out studies

for ultrafine particles. The Applicant further noted that the proposed approach to take part in, and fund, studies is considered to be appropriate, adding that the **draft s106 Agreement** [REP2-004] contains commitments to fund Reigate and Banstead Borough Council to carry out these studies.

- 5.1.32 The Applicant further noted that it has carried out a qualitative ultrafine particle assessment within **ES Chapter 18: Health and Wellbeing** [APP-043], which does not suggest there's a linear relationship between PM 2.5 and ultrafine particles, acknowledging that there are different units of measurement for each. Ultrafine particles relates to a particle count concentration, while PM2.5 is a mass concentration, meaning concentration of the latter is not reliable as a proxy. The Applicant noted that it could provide more information on this point in an explanatory note, and acknowledged CAGNE's request for information as to how the different dispersion characteristics of ultrafine particles has been considered.
- 5.1.33 **[Post hearing note:** Please see the response to Action Point 17 at **The Applicant's Response to Actions – ISH7 – Other Environmental Matters** (Doc Ref. 10.26.3).]

## 6 Agenda Item 6: Draft Section 106 Agreement

- 6.1. **The Applicant will be asked to introduce the draft s106 agreement and to explain the reasoning and rationale behind the obligations and the financial contributions within the draft agreement.**
- 6.2. **The Applicant will be asked to provide justification or reasoning for why the provisions within the draft agreement are not suitable or appropriate to be controlled by Requirements in the Development Consent Order**
- 6.2.1 At the ExA's invitation, the Applicant gave a brief overview of the current s106 Agreement (the "**Agreement**") as it stands:
- a. The Agreement is between the Applicant, Crawley Borough Council, West Sussex County Council, and Reigate and Banstead Borough Council, and is intended to be entered into before Deadline 9, with a completed version to be submitted at that deadline. It has been the subject of discussions with the JLAs. The Applicant received the JLA's comments at Deadline 3, which will be responded to in due course.
  - b. The front end of the Agreement is mainly boilerplate provisions, however, it provides that at DCO commencement, any section 106 agreement in place between the parties relating to the 2022 Agreement ceases to have

effect, having been superseded by this new Agreement. The substantive obligations on both parties are set out in topic specific schedules.

- c. Schedule 1 relates to air quality, and includes obligations about power usage at aircraft and air quality monitoring, engagement related to air quality, involvement in ultrafine particle ("**UFP**") studies, and reporting on measures implemented by the Applicant to improve air quality through an Air Quality Action Plan ("**AQAP**").
- d. Schedule 2 relates to noise including noise supplements, aircraft testing and engagement with Gatwick Airport Consultative Committee ("**GATCOM**").
- e. Schedule 3 relates to surface access, and includes obligations relating to the Transport Forum, the Transport Steering Group, Gatwick Parking Meeting, Sustainable Transport Fund, a commitment to invest in bus and coach services, the Off-Airport Parking Support Contribution and the Transport Mitigation Fund.
- f. Schedule 4 relates to the London Gatwick Community Fund, and includes an obligation to establish the Fund and the mechanisms for how it will be distributed. The scale of that Fund will increase as passenger numbers increase.
- g. Schedule 5 relates to employment, skills and business, and includes obligations to produce in the Employment, Skills and Business Strategy ("**ESBS**") Implementation Plan and review at every five years, along with provisions for a newly established ESBS Steering Group.
- h. Schedule 6 relates to biodiversity and landscaping, including obligations to make contributions to the Gatwick Greenspace Partnership and a contribution to Reigate and Banstead Borough Council for maintaining replacement open space at Church Meadows.
- i. Schedule 7 relates to obligations of the councils, including obligations relating to engagement with the airport and record keeping.

6.2.2 In respect of some of the more detailed provisions, the Applicant explained that:

- a. In respect of Schedule 1, a number of the air quality obligations are drawn through from the existing obligations that have been agreed with the local authorities.
- b. Operational air quality monitoring provided for in paragraph 3 of Schedule 1 commits the Applicant to carrying out the monitoring of NO<sub>x</sub>, NO<sub>2</sub>, PM<sub>10</sub>



and PM 2.5 at specified locations during the monitoring period. The Applicant recognised that although no significant adverse air quality impacts have been identified through the ES, air quality is a sensitive issue in the area of the airport. The Applicant has therefore committed to monitoring which replicates what has been in place already, albeit in slightly amended form.

- c. There is also an air quality monitoring contribution where the Applicant will pay Reigate and Banstead Borough Council £70,000 a year from commencement until the end of the monitoring period, including provision for the repair of monitoring equipment, and the preparation of an air quality monitoring report.
- d. There are provisions replicated from the existing section 106 agreement relating to considering noise supplements when reviewing the Noise Action Plan, maintaining charge differentials and the charges payable by aircraft operators, and aircraft engine testing provisions under programme of engagement about noise.
- e. In relation to surface access (Schedule 3), a number of provisions deal with the Gatwick Area Transport Forum and the Steering Group. In respect of substantive obligations relating to mitigation, there is a commitment to maintain a Sustainable Transport Fund which will be made available to fund initiatives encouraging the use of sustainable transport modes. At least half of that fund has to be spent on achieving the initiatives identified in the **Surface Access Commitments ("SACs")** [\[APP-090\]](#) . The Sustainable Transport Fund is capped at £10 million at any point to encourage the fund to be spent and a minimum of 50% of the fund at any point must be invested into encouraging sustainable transport, consistent with the SACs. The Schedule also contains a commitment to invest £10 million to support the introduction or operation or use of bus and coach services, that reflects the SAC commitments.
- f. The Transport Mitigation Fund is intended be used to address any unforeseen impacts on the transport network arising from the Project. The Applicant noted that it is confident that no impacts should arise, but has committed to making the fund available in case they do so.
- g. The Applicant noted that the proposed Community Funds paid to each of the Community Foundations are intended to mitigate the intangible impacts of the Project on the community by providing access to finances towards community projects. The Fund will be tied to incremental

increases in relation to passenger numbers, and bolstered by fines received for noise breaches.

- h. There is a proposed commitment to submit an ESBS Implementation Plan to an ESBS Steering Group for approval, along with provisions for its review. £14 million will be made available for the implementation of this plan, which will be allocated in accordance with the plan.

6.2.3 In relation to why these provisions are in the Agreement, the Applicant explained that many of these provisions have been carried forward from the current section 106 Agreement which has worked well between the parties historically. The Applicant recognised the reference to the ANPS which states that planning obligations should only be used where they are necessary to make the development acceptable in planning terms, and accepted that it may be possible in principle for elements of the Agreement to be pulled out and added into the DCO as equivalent requirements.

6.2.4 However, the Applicant contended that here, as often happen in other cases, there are practical advantages to using a section 106 agreement to secure commitments. Those practical advantages include the flexibility to modify the agreement through the agreement of the parties, which can be very useful where the operation of governance groups is established pursuant to an agreement, particularly when those groups are charged with dealing with funds which are more naturally secured within the body of a section 106 agreement.

6.2.5 Finally, the Applicant noted that the ExA has raised the question about whether mitigation should be secured in the DCO rather than the Agreement. The Applicant added that if the ExA has concerns with the extent of the obligations that are included in the DCO, the Applicant would be happy to look into it further upon request.

6.2.6 **[Post hearing note: Please see the response to Action Points 18, 19 and 20 at The Applicant's Response to Actions – ISH7 – Other Environmental Matters (Doc Ref. 10.26.3).]**

6.2.7 The ExA asked the Applicant to respond to the comments from the JLAs that the existing and earlier versions of the s106 agreement might not be the most appropriate starting point for the new Agreement, due to these versions not being tied to any particular development, and the implications that had for the JLAs in negotiating the agreements.

6.2.8 The Applicant opposed the description of the proposed Agreement as a 'warmed up version of the prior section 106 agreement', emphasising that it is a bespoke

Agreement for this Project. The Applicant gave further background to the process of negotiating and agreeing the current and earlier iterations of the section 106 agreement. Generally, a year before the agreement is to come to an end, the Applicant would communicate with the authorities that the agreement is due to be updated. A line-by-line review of the agreement is then undertaken, and a detailed, thorough review. The general approach to date has been to keep changes to a minimum, however, making amendments is not prohibited and changes have been made in both of the most recent rounds of reviewing the current agreement to ensure it is fit for purpose for the term of the agreement. The Applicant also meets with Council officers twice a year to discuss the current agreement.

- 6.2.9 The ExA asked why the Agreement only includes West Sussex County Council, Crawley Borough Council, and Reigate and Banstead Borough Council as parties.
- 6.2.10 The Applicant explained that it has followed the approach requested by the JLAs which is that those Councils which are receiving monies, or have direct obligations are party to the Agreement.
- 6.2.11 The ExA asked whether the specific Secretary of State needs to be identified in Recital B.
- 6.2.12 The Applicant responded that it was intended to be the Secretary of State for Transport, and would make the necessary amendments in the next iteration of the Agreement.
- 6.2.13 The ExA queried why Recital G was in square brackets, and what the status of the Memorandum of Understanding ("MoU") referred to in the Recital was.
- 6.2.14 The Applicant explained that this is the latest MoU that it is aware of the JLAs having entered into with each other in relation to the Airport. The recital is in square brackets because the Applicant is waiting for comments back from the JLAs to confirm whether this is still the appropriate MoU to refer to. The Applicant further noted that an Explanatory Memorandum for the Agreement would be provided at Deadline 6 to explain the individual provisions of the Agreement.
- 6.2.15 The ExA asked, in the event of conflict between the DCO and the Agreement, which would have precedence.
- 6.2.16 The Applicant explained that it did not intend there to be any conflict between the DCO and s106. Were a conflict to arise, the DCO and section 106 Agreement have different enforcement mechanisms such that issues of precedence between the two may not arise.

- 6.2.17 **[Post-Hearing Note:** Having reflected on the query, the Applicant confirms that the terms in each document would need to be interpreted in the context of the definitions and other relevant provisions in that document, and that there would be nothing to prevent the different documents dealing with specific terms in different ways, such that the issue of conflict would not arise. However if an issue of conflict otherwise arose, in a way which somehow required a choice between the construction of statute and an obligation, it is accepted that the terms of the DCO would be likely to take precedence.]
- 6.2.18 The ExA noted that the 2022 section 106 agreement would cease to have any effect from the commencement date.
- 6.2.19 The Applicant noted that the 2022 agreement ends at the end of 2024, but commented that discussions are underway between the Applicant and the JLAs to enter into a replacement agreement. This is provided for in the draft Agreement.
- 6.2.20 The ExA asked the Applicant to explain the definitions of the terms 'begin' and 'commence'.
- 6.2.21 The Applicant explained that 'begin' is defined in both the Agreement and the DCO by reference to section 155 of the Planning Act 2008 (when development begins). The term was included in the Agreement, with a provision for the Applicant to provide notification to the JLAs of the date when the Project "begins" in addition to when it is commenced" but as the notification provisions have been removed from the Agreement and added to the dDCO this definition will be removed in the next version of the Agreement.
- 6.2.22 The ExA noted that various time periods have not been identified in the Agreement and queried whether these have been agreed in principle.
- 6.2.23 The Applicant responded that an agreed position has not yet been reached.
- 6.2.24 The ExA asked how the Applicant considered the contributions proposed under various headings in the Agreement sit with the issue of mitigation. The ExA asked how they, and ultimately the Secretary of State, should take account of those elements.
- 6.2.25 The Applicant noted that the Explanatory Memorandum to be submitted at Deadline 6 will address this matter in detail, but made the following comments:
- a. In relation to the Air Quality contributions and obligations, the Applicant noted it would not consider this mitigation in the formal sense, as it had not identified any likely significant adverse effects in the ES that

specifically require mitigation. Instead, these contributions and obligations have been committed to out of recognition of the need to better understand the effects near the airport.

- b. The Applicant did consider that certain aspects of the noise provisions to be mitigation, for example aircraft engine testing.
- c. The Applicant considered that most of the Surface Access Schedule would not be mitigation, as they are just good practice. However, it did consider the provisions relating to the Transport Forum, the Steering Group, and the Sustainable Transport Fund to be mitigation, in the sense that they support the achievement of the Applicant's mode share commitments. The same applied to the investment in coach and bus services, and arguably the Off-Airport Parking Support Contribution.
- d. The Transport Mitigation Fund has been considered to be potential mitigation, as it provides for impacts which may arise on an unforeseen basis in the future.
- e. The Community Fund is considered mitigation for the intangible effects on the community by providing access to community projects. It is reducing perceived impacts arising from the use of the airport, which cannot be properly categorised under more specific headings.
- f. The ESBS Implementation Plan is ultimately targeted at maximising benefits to the community, the Applicant queried whether this would be considered mitigation in the typical sense.

6.2.26 The Applicant summarised that there is a combination of measures which could be considered mitigation, and a number that could not. The Applicant reiterated that this would be most appropriately set out and addressed in the Explanatory Memorandum, which will explain how those various sums are justified, although that justification should more appropriately be provided once the sums are agreed.

6.2.27 ExA noted that the £10 million for bus and coach services is expressed as a 'minimum,' and queried whether this means there is a low likelihood of exceeding that.

6.2.28 The Applicant explained that this needs to be seen in context with the various SACs, and with a degree of flexibility. The Applicant will undertake what it needs to do to meet its outcomes, so it does not necessarily require committing to a specific figure with this objective in mind.



- 6.2.29 The ExA asked the Applicant to explain how the provisions of the Agreement relate to paragraphs 55-58 of the NPPF.
- 6.2.30 The Applicant noted that this level of detail will be set out in detail in the Explanatory Memorandum, but provided the following comments:
- a. Paragraph 55 of the NPPF relates to the question that has been debated, about whether one can move obligations into the body of the DCO. Generally, the Applicant would argue that where contributions or obligations have been proposed they are there to ensure that any impacts of the project which have resulted in the provision of mitigation are secured accordingly, or where there are other concerns over the impacts of the Project these can be addressed, as necessary, all in a manner which confirms that the Project is acceptable. There is no dispute that the obligations are relevant to planning and related to the Project. This will be addressed by reference to individual obligations in the forthcoming Explanatory Memorandum.
  - b. Paragraph 56 of the NPPF relates to planning conditions, and paragraph 57 relates to obligations, and there is no suggestion that anything being proposed is not fairly and reasonably related to the impacts of the Project. Again this will be addressed in the Explanatory Memorandum.
  - c. Paragraph 58 of the NPPF is more related to the viability assessment rather than assessment of the DCO.
- 6.2.31 The ExA asked the Applicant to give a brief response to the JLAs' response to ExQ1 DCO 1.53 [\[REP3-135\]](#).
- 6.2.32 The Applicant noted that the response relates to the value of the Community Fund and this is a point currently under negotiation with the JLAs. The Applicant explained that it had received a proposal from the JLAs, which provided a comparison for the current proposal. That counter proposal was based on work undertaken for the Airports Commission between 2013 to 2015. The Commission was considering a very different scheme to the current proposal. The Applicant's general position is that the appropriate and helpful comparison for the NRP Community Fund needs to be given some further thought and will continue to be discussed with the JLAs.
- 6.2.33 The ExA responded that the above question came about by reference to paragraph 5.247 of the ANPS, looking at it in the context of community contributions, and requested that the Applicant consider the matter of community contributions in this light as well.

- 6.2.34 The Applicant acknowledged the ExAs comments but added a note of caution to applying that paragraph of the ANPS directly to Gatwick when it was written specifically for Heathrow and therefore has limited use as a comparison.
- 6.2.35 In response to CAGNE's concern as to the lack of provision for local entities' involvement in the Agreement, the Applicant responded that there is a balance to be struck between community participation and the efficacy of the various groups proposed in the Agreement. In relation to Surface Access, the Applicant considered that it is appropriate for the various local authorities to be the public representation in the various forums.
- 6.2.36 In response to the JLAs, the Applicant explained that it is not necessary or appropriate for the AQAP to become a control document as there are no identified effects and the obligations relate to the provision of information relating to monitoring.
- 6.2.37 In response to Ruser Parish Council's comments that more of the adjoining authorities should be signatories to the Agreement, and that the East and West Sussex County Councils should be identified as separate entities with their own entitlements under the Community Fund, the Applicant responded that the parties to the agreement has been proposed on the basis agreed with the JLAs but is subject to confirmation from the JLAAs. The Applicant understands that the MoU between the JLAs would allow appropriate participation by authorities other than the signatories to the agreement. The Community Fund had been set up by reference to the coverage of the relevant community foundations.

## 7 **Agenda Items 7, 8 and 9: Action points, any other business, and close of hearing**

- 7.1.1 At the end of the hearing the ExA expressed disappointment that no expert had been available to answer questions relating to the FB and this was related to wider issues about the future baseline, in respect of which the ExA shared concerns raised by the JLAs. The ExA suggested that the Applicant consider these concerns carefully.
- 7.1.2 The Applicant responded that it too was concerned if there was any disappointment on the part of the ExA. It assured the ExA that there had been no intention to avoid dealing with any questions, based on the title for the hearing "other environmental matters" and the way the issue of the FB had been raised previously, the Applicant had not anticipated that it would be asked about the detailed operation of the airport including terminal capacity. However, as it had already indicated, it would consider the manner in which this issue had

developed through discussions with the JLA and ensure it was addressed as quickly as possible.

- 7.1.3 **[Post-Hearing Note:** the Applicant has provided responses to the questions on future baseline at **The Applicant's Response to Actions – ISH7 – Other Environmental Matters** (Doc Ref. 10.26.3). Further, the Applicant requested to address the ExA on these comments at the start of CAH1. A record of those comments is provided at **Written Summary of Oral Submissions CAH1: Compulsory Acquisition** (Doc Ref. 10.25.3).]